

Supreme Court, U.S.  
FILED

JUL 16 1990

JOSEPH F. SPANIOL, JR.  
CLERK

2  
~~90-105~~  
APPENDIX

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1989

M. WILEY CATLETT

Petitioner,

v.

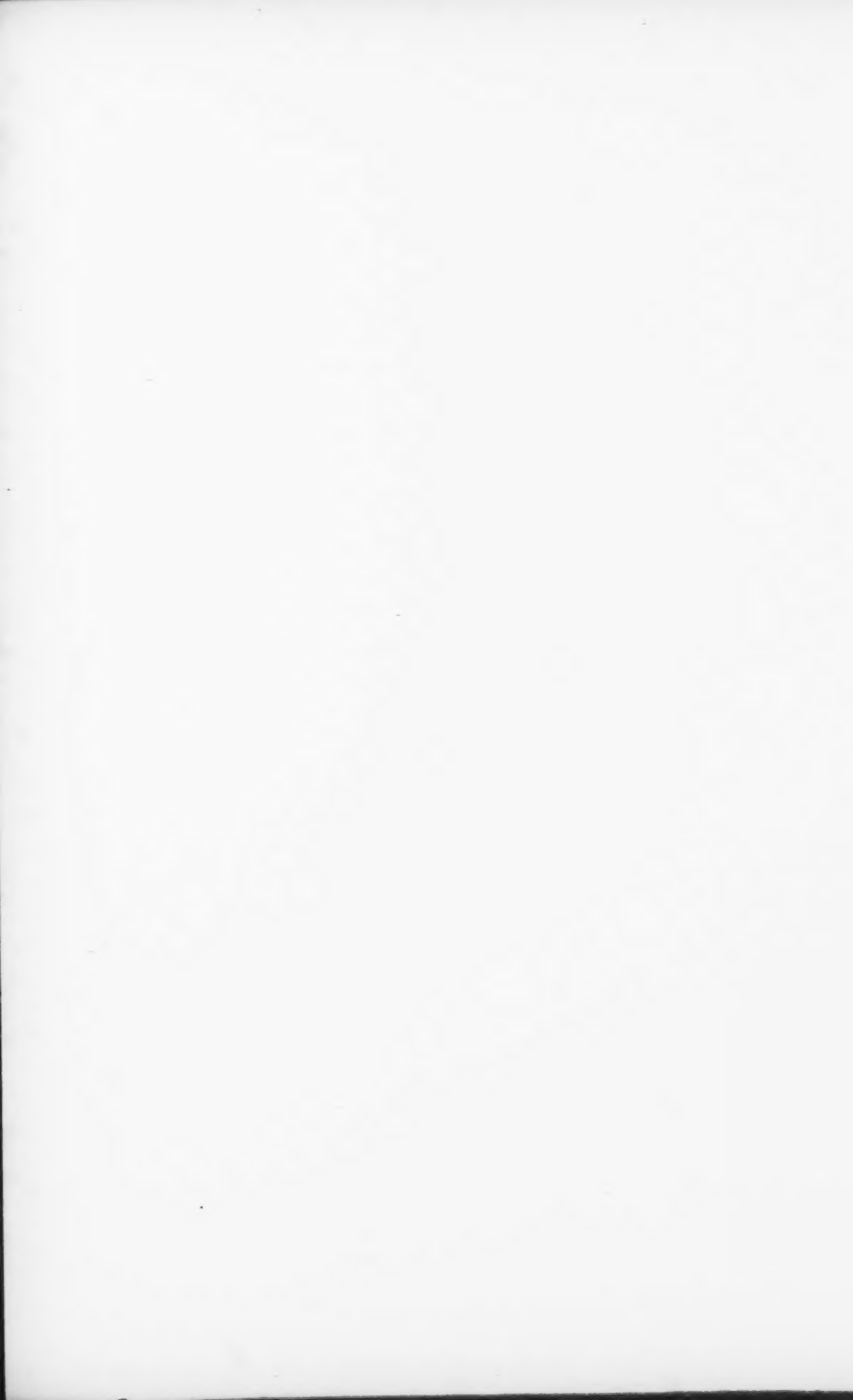
JOHN R. LIVELY,  
JOHNNY W. RICHARDS, II, INDIVIDUALLY  
AND AS SUCCESSOR ADMINISTRATOR OF THE  
ESTATE OF ERNEST LUTHER CATLETT,  
DECEASED, WESTERN SURETY COMPANY,  
AUBREY GROUP, Composed of: JOSEPH R.  
KILIANSKI, owner, DAVID J. MCGILVRAY,  
owner, SHARON L. TOLBERT, owner, L.  
M. TOLBERT, Buyer, FLORENCE IONA  
CATLETT, INDIVIDUALLY, and as INDE-  
PENDENT EXECUTRIX of the ESTATE of P.  
C. CATLETT, DECEASED and as ADMINIS-  
TRATRIX with Will Annexed to the  
ESTATE of CHARLIE CATLETT, DECEASED,  
MADRIN HUFFMAN, AS PROBATE COUNTY  
CLERK OF TARRANT COUNTY, TEXAS,  
(TOM J. FOUTS, Realtor & Commissioner  
filed notice of bankruptcy 6-16-89)

Respondents.

PETITION for WRIT of CERTIORARI to the UNITED  
STATES COURT of APPEALS for the FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, Pro Se  
1495 Sunnyside Avenue  
Highland Park, Ill. 60035  
(708) 831-3893



In The  
Supreme Court of the United States

INDEX OF EXHIBITS OF APPENDIX

<u>Appendix Number</u>	<u>Name of Exhibit</u>
" A "	April 18, 1989 - ORDER - U.S.Dist. Ct. for the Eastern Dist. of Tx., Sherman Div. - (No. S-87-83-CA) - Judge Paul Brown - DISMISSED - App.1
" B "	April 18, 1989 - MEMORANDUM OPINION - U.S.Dist.Ct. for the Eastern Dist. of Tx., Sherman Div. - (No. S-87-83-CA) - Judge Paul Brown - DISMISSED - App. 2 thru 4
" C "	AUGUST 22, 1989 - ORDER - U.S.Dist. Ct. for the Eastern Dist. of Tx., Sherman Div. - (No. S-87-83-CA) - Judge Paul Brown - DENIED - App.5-6
" D "	March 14, 1990 - APPEAL - In The U.S.Ct. of Appeals For The FIFTH CIRCUIT - (No. 89-2974)(No. S-87-83-CA below) - Per Curiam: JUDGES, GEE, DAVIS and JONES, Circuit Court - AFFIRMED - App. 6
" E "	April 26, 1990 - ON PETITION FOR REHEARING and SUGGESTION FOR REHEARING EN BANC - OPINION - CIRCUIT JUDGES, GEE, DAVIS and JONES (No. 89-2974)(No. S-87-83-CA below) Per Curiam: DENIED - U.S.Ct. of APPEALS For The FIFTH CIRCUIT - App. 8-9
" E.1 "	April 3, 1990 - ORDER - Further extension of time for filing a petition for rehearing from April 11, 1990 is DENIED - App. 9.1 & 9.2





- " F "      January 24, 1968 - No. 7989 - Will  
of CHARLIE CATLETT - Provision  
SECOND - Plaintiff's Exhibit "A"  
in Complaint - Filed 9-13-74, Denton  
Co.,Tx.Req.for Const. App. 10 & 11
- " G "      December 16, 1980 - Letter from  
"LIVELY" to "BROILES" Re: 236-39718-  
76,D.C.,Tarrant Co.,Tx., Exh. "B" in  
Comp.Judg.doesn't recite description  
App. 12 thru 14
- " H "      December 17, 1980 - Letter from  
"BROILES" to Judge Burnett - Re: 77-  
2726 Est.Ernest , Application.App.15
- " I "      December 22, 1980 FILED \* #77-2726 -  
Mot. to App.Settlement" - No descrip-  
tion of land in it - App. 16 thru 19
- " J "      March 12, 1981 FILED - #77-2726 -  
"Resp. to Adm.'s Mot. to App.Settle."  
See Item II - App. 20 thru 22
- " K "      May 13, 1981 - #77-2726 - "CLAIM  
AGAINST THE ESTATE OF ERNEST LUTHER  
CATLETT, DEC'D."not a legal entity  
App. 23 thru 25
- " L "      May 14, 1981 - "ORDER CONFIRMING SET-  
TLEMENT", Prob.C.No.1, Tarrant Co.,Tx.  
#77-2726 same being void - no descrip-  
tion of land - HARRIS v SHAFER 86 Tx.  
314, 23 S.W. 979 at 980 & other reas.  
App. 26 thru 28
- " M "      October 4, 1982 - No.81-8158-B,Den-  
ton Co.,Tx.,158th D.C.J.Narsutis -  
"ORDER FOR SANCTIONS AND DEFAULT IN-  
JUDGMENT ORDERING PARTITION AND APP.  
COMM" in FLO'S" Partition action  
Failed to name all parties-insuff.  
Descrip. Void - App. 29 thru 38



- " N "      October 14, 1982 - No.81-8158-B,Den., Co.,Tx. "FLO" Partition action - J. Narsutis' 3rd Judg. "INTERLOCUTORY ORDER CORRECTING ERRORS - All three Reversed & Remanded by May 18, 1983 OPINION,APPENDIX "P" App. 39 thru 45
- " O "      May 10, 1983 - #77-2726 Prob.C.Tarr. Co.,Tx.- ORDER REMOVING ADMIN. M. WILEY CATLETT for mismanagement - Order void as impossible of performance.Ex.Parte Mason,T.C.A. 1979,584 S.W 2d 936"Order impossible of perf. void App. 46 thru 49.
- " P "      May 18, 1983 - OPINION,Unpublished - No. 2-82-212-CV (#81-8158-B below) REVERSED & REMANDED three NARSUTIS' Judgments of Oct. 4-14--82 with costs against "FLO" - Hence, there has been NO LEGAL PARTITION of the land App. 50 thru 56
- " Q "      May 24, 1983 - Letter from Attorney Wm.L.Smith,Jr.of Denton,Tx.to CLERK & another to Suc.Adm.of Ernest's estate. No. 77-2726,Tarrant Co.,Tx. requesting to be NOTIFIED, Ex."G" in Comp. App. 57 & 58 - Rule 10(c)
- " R "      CIVIL DOCKET (both sides) #236-39718-76, 236th.D.C.,Tar .,Co.,Tx. - 9-1-76 Judg.Signed 9-15-81 - Trial 11-17-80 thru 11-20-80 - App. 59 thru 60
- " S "      April 16, 1987 - Pages C of A, 1,2,3, FC of Exh. "J" in Complaint quoting Charlie Catlett's SECOND PROVISION of his Will- Rec. for construction. Full "Will" Exhibit "A" in complaint. App. 61 thru 71 APPENDIX "S" herein
- " T "      July 26, 1976 - Letter from Dr. Walt L. Geyer,M.D. Re: Ernest Luther Catlett- incompetent - App.72-73



- " U "     March 27, 1989 - date of mailing  
Plaintiff's "Mot.toCOMPEL ANSWERS  
from "FLO" under 37(a),37(d),33 & 26  
(Page 1 thereof) QUESTION V.  
App. 74 & 75
- " V "     April 16, 1987 (S-87-83-CA) Federal  
Complaint in U.D.Dist.Ct.Eastern  
Dist.Tex.,Sherman Div.- LIST OF  
EXHIBITS - "A" thru "J" & EXHIBITS  
"1" thru "10" in Ex. "J" thereof  
App. 76 thru 79
- " W "     February 8, 1985 - #77-2726, Prob.C.  
#1, Tar.Co, Tx. "ORDER AUTHORIZING PAY-  
MENT OF CLAIM \* \$41,684. "LIVELY"  
Paid 2-8-85 App. 80 & 81
- " X "     THE CONSTITUTION OF THE UNITED STATES  
ART. III., SEC.2 - App. 82  
  
AMENDMENTS " V " & "XIV" - App. 82
- " Y "     January 25, 1985 - First page only of  
"LIVELY'S" - AUTHENTICATED CLAIM OF  
JOHN R. LIVELY " for \$42,228.00 in  
alleged attorney's fees -Paid \$41,684  
on 2-8-85 App. 83 & 84



EOD - 4-18-89

FILED  
4-18-89

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT

CIVIL ACTION

v.

NO. S-87-83-CA

JOHN R. LIVELY, et al

O R D E R

For the reasons expressed in the  
MEMORANDUM OPINION filed of even date here-  
with, plaintiff's claims are dismissed for  
lack of subject matter jurisdiction.

It IS SO ORDERED.

Signed this 18th day of April, 1989.

PAUL BROWN

---

UNITED STATES DISTRICT JUDGE

Mid 4-18-89

to: Catlett  
Richards  
Lively  
Thompson

S8783. OPN--1





EOD 4-18-89

FILED  
4-18-89

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT

CIVIL ACTION

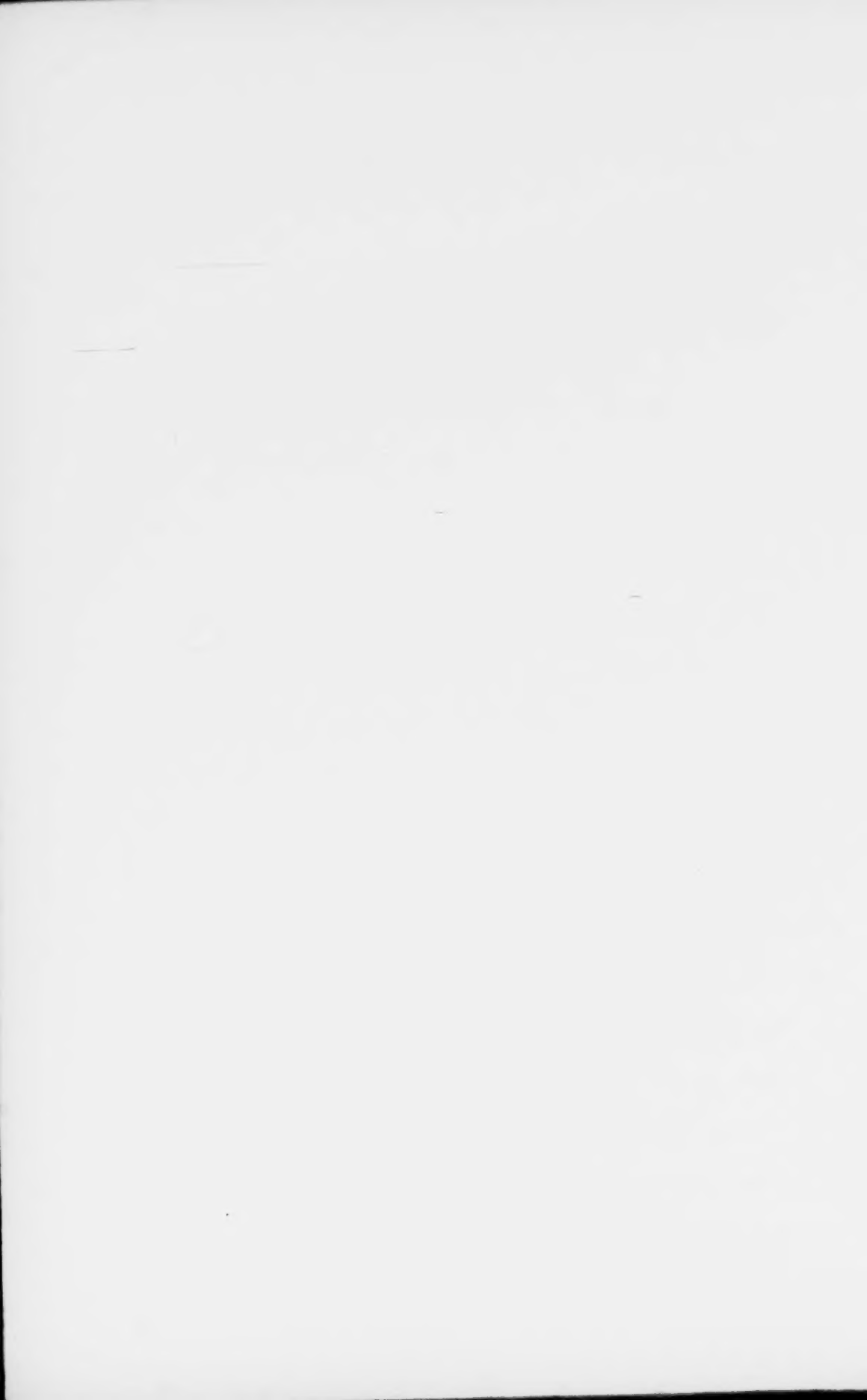
v.

No. S-87-83-CA

JOHN R. LIVELY, et al

MEMORANDUM OPINION

The Court has under consideration Motion to Dismiss Complaint filed on behalf of Federal Land Bank of Houston; Motion to Dismiss filed on behalf of Joseph R. Kilianski; Motion to Dismiss of L. M. Tolbert, Sharon L. Tolbert, David J. McGilvray, and the Aubrey Group; Motion to Dismiss filed on behalf of Florence I. Catlett; Motion to Dismiss filed on behalf of Madrin Huffman; Motion to Dismiss of Defendant Lively; and, Motion to Dismiss filed on behalf of Johnny W. Richards, II. The Court has considered these motions, and the lack of response thereto, and it is of the opinion that such motions should be granted and this action dismissed.



In considering the defendant's various motions to dismiss, the allegations in plaintiff's complaint must be taken as true and construed in a light most favorable to plaintiff. Hishon v. King & Spalding, 104 S. Ct. 2229, 2232 (1984).

It is apparent that plaintiff's complaints relate solely to orders entered in several state court proceedings. However, "lower federal courts possess no power whatever to sit in direct review of state court decisions."

Atlantic Coast Line R. Co. v. Locomotive Engineers, 90 S.Ct. 1739, 1748 (1970). All of plaintiff's present claims are inextricably intertwined with orders previously entered by state courts, and this court lacks subject matter jurisdiction to review the orders. District of Columbia Court of Appeals v. Feldman. 103 S.Ct. 1303 (1983).

Therefore, defendants' motions to dismiss should be granted. An Order has been signed



separately and simultaneously of even date herewith.

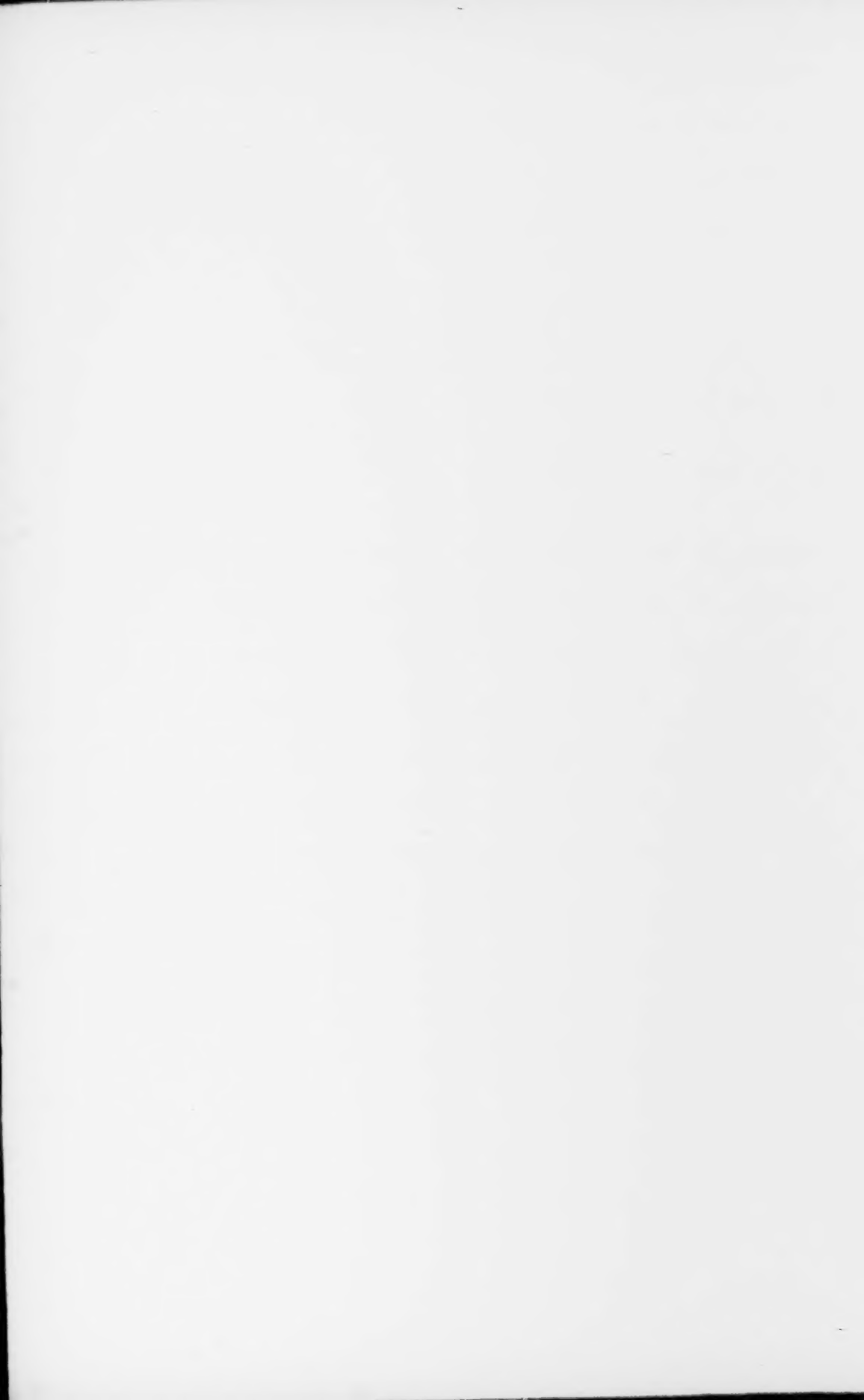
Signed this 18th day of April, 1989.

Paul Brown

United States District Judge

Mid 4-18-89 to: Catlett  
Richards  
Lively  
S8783.OPN--2 Thompson

(NOTE: It should be noted that Attorney of Record, C. H. Gillespie, III of Gillespie & Gillespie, 304 MBank Building, Sherman, Texas 75090 for defendant, FEDERAL LAND BANK OF TEXAS was not furnished a copy of this MEMORANDUM OPINION nor of the ORDER signed April 18, 1989. The ORDER, MEMORANDUM OPINION refers to Motion to Dismiss Complaint filed on behalf of Federal Land Bank of Houston - which bank has not existed since about 1979; therefore it is in error.)



EOD 8-22-89

FILED  
8-22-89IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT

CIVIL ACTION

v.

S-87-83-CA

JOHN R. LIVELY, et al

O R D E R

On this day came on for consideration plaintiff's Motion to "Set Aside" Judge Brown's Order of Dismissal of Plaintiff's Claims for Lack of Subject Matter Jurisdiction. Plaintiff's Motion to Enlarge Time, etc., and Plaintiff's Motion for Sanctions Under Rules: 37, 34, and 26, and the Court having considered the same, is of the opinion that such motions should be denied.

It is, therefore, ORDERED that plaintiff's Motion to "Set Aside" Judge Brown's Order of Dismissal of Plaintiff's Claims for Lack of Subject Matter Jurisdiction, Plaintiff's Motion to Enlarge Time, etc., and Plaintiff's Motion for Sanctions Under Rules: 37, 34, and 26 be, and the same are hereby, DENIED.





Signed this 21st day of August, 1989.

Paul Brown

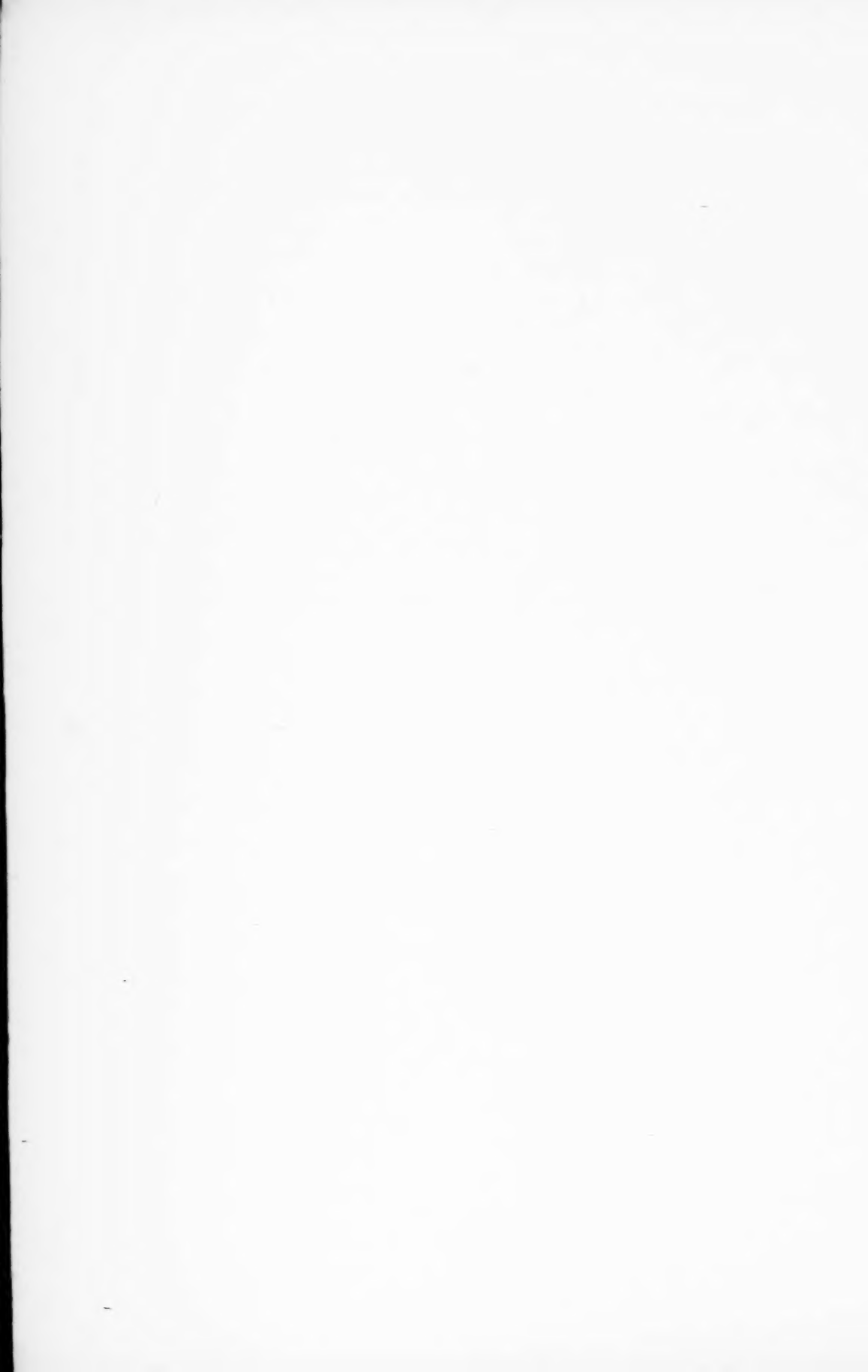
UNITED STATES DISTRICT JUDGE

Mid 8-22-89 to:

Catlett  
Richards  
Lively  
Thompson  
Richards  
Gillespie

S8783CA OFN --1-2

(NOTE: The Civil Docket Sheet Page 3, Item No. 397 dated 8-21-89 -"MOTION of pltf to COMPEL answers from deft Florence Catlett bh" was never acted on by Judge Paul Brown; therefore, he could not proceed with his ORDER since there was uncompleted matters still before the Court.



No. 89-2974

Appeal from the United States District Court  
for the Eastern District of Texas  
(S-87-83-CA)

Before GEE, DAVIS and JONES, Circuit Judges. 1/  
PER CURIAM:

1/ Local Rule 47.5 provides: The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.



IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

NO. -- 89-2974

---

M. WILEY CATLETT,  
Plaintiff-Appellant,  
  
versus  
  
JOHN R. LIVELY, ET AL.,  
Defendants-Appellees.

- - - - -

Appeal from the United States District Court  
for the Eastern District of Texas

- - - - -

ON PETITION FOR REHEARING  
AND  
SUGGESTION FOR REHEARING EN BANC

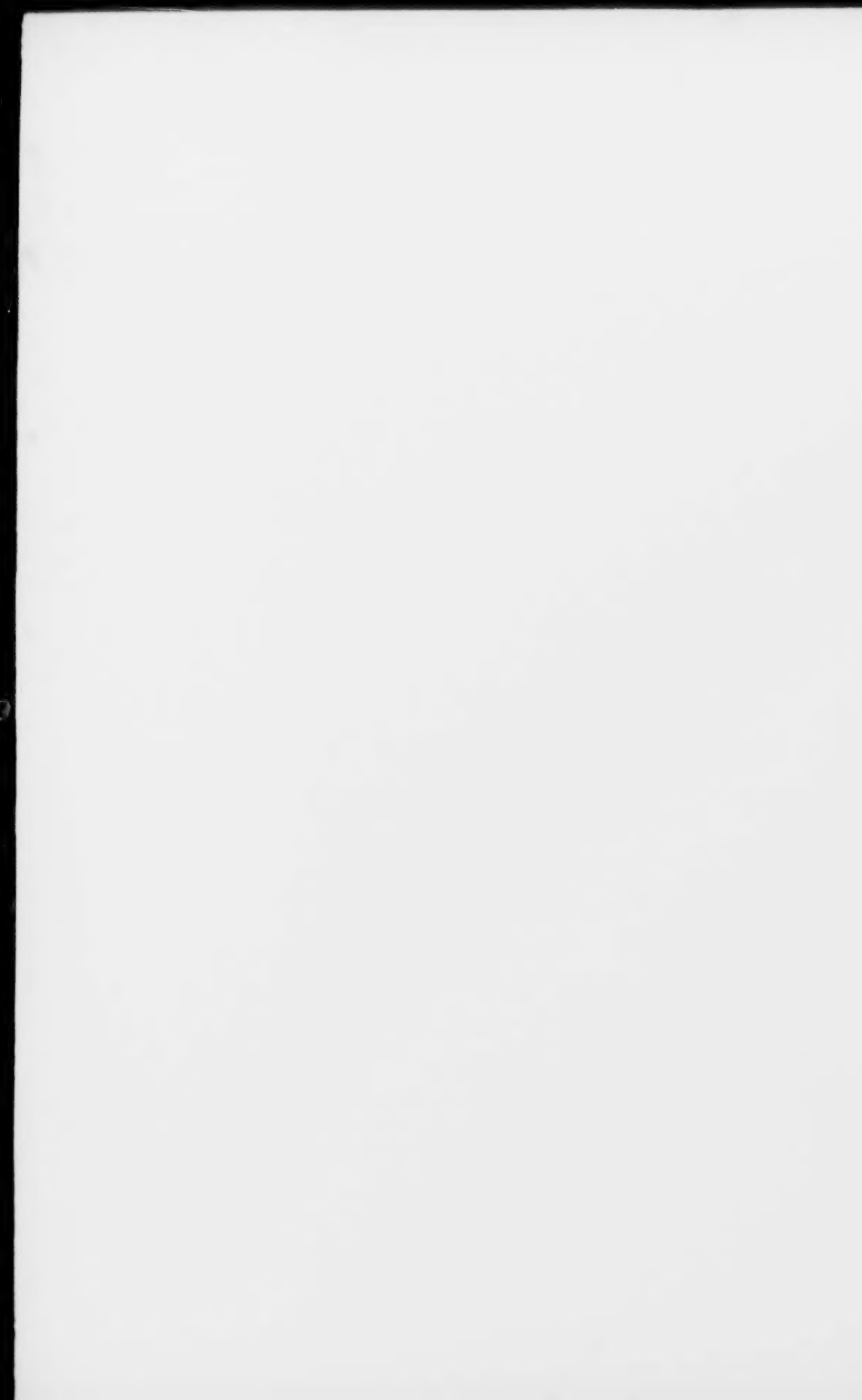
(Opinion March 14, 1990, 5 Cir., 199, \_\_ F.2d  
( April 26, 1990 )

Before GEE, DAVIS and JONES, Circuit Judges.

PERCURIAM:

( X ) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request



of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

CLERK'S NOTE:

Signed: Edith H. Jones

SEE FRAP AND LOCAL  
RULES 41 FOR STAY  
OF THE MANDATE.

United States Circuit Judge

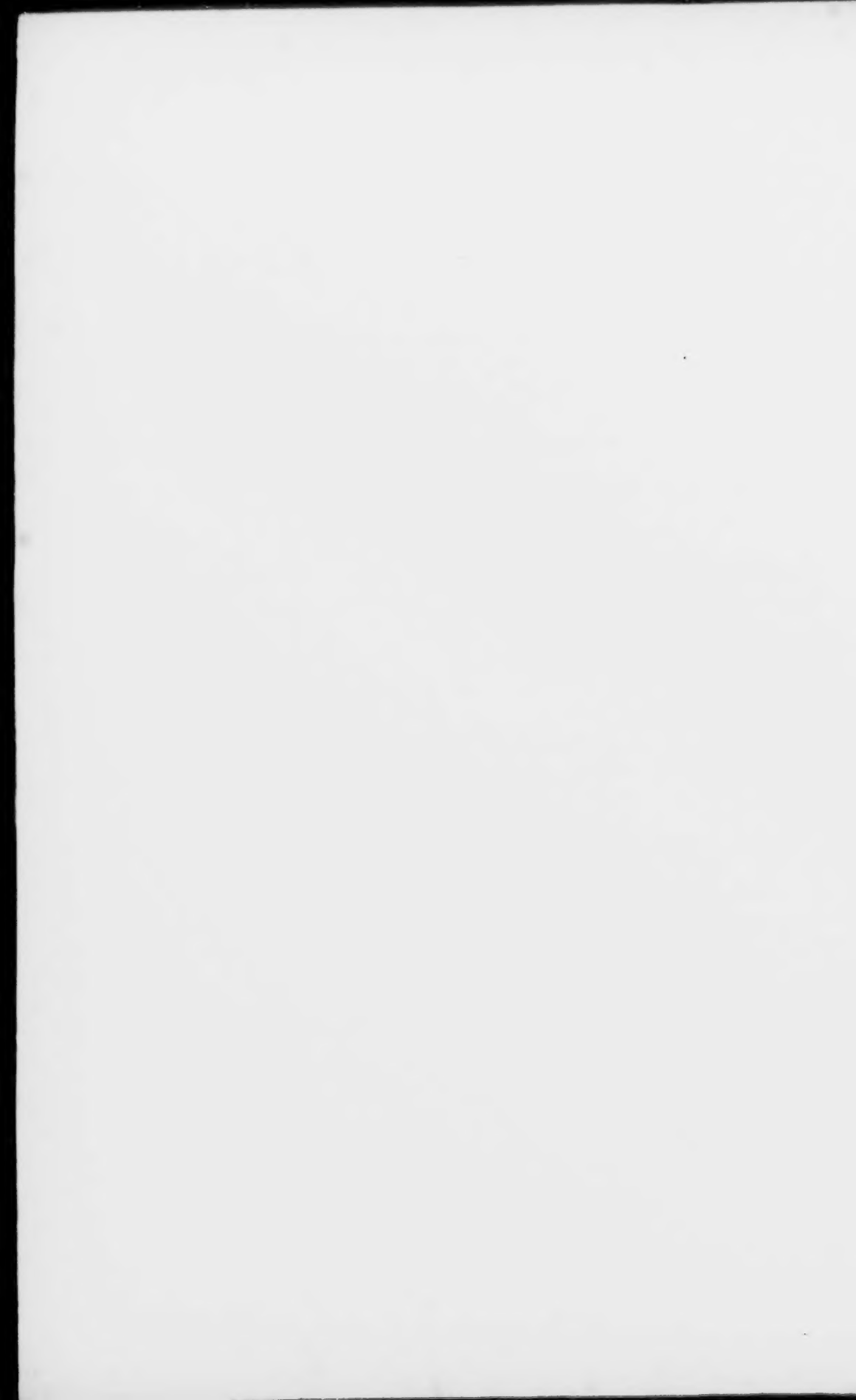
REHG-6

U. S. COURT OF APPEALS

F I L E D

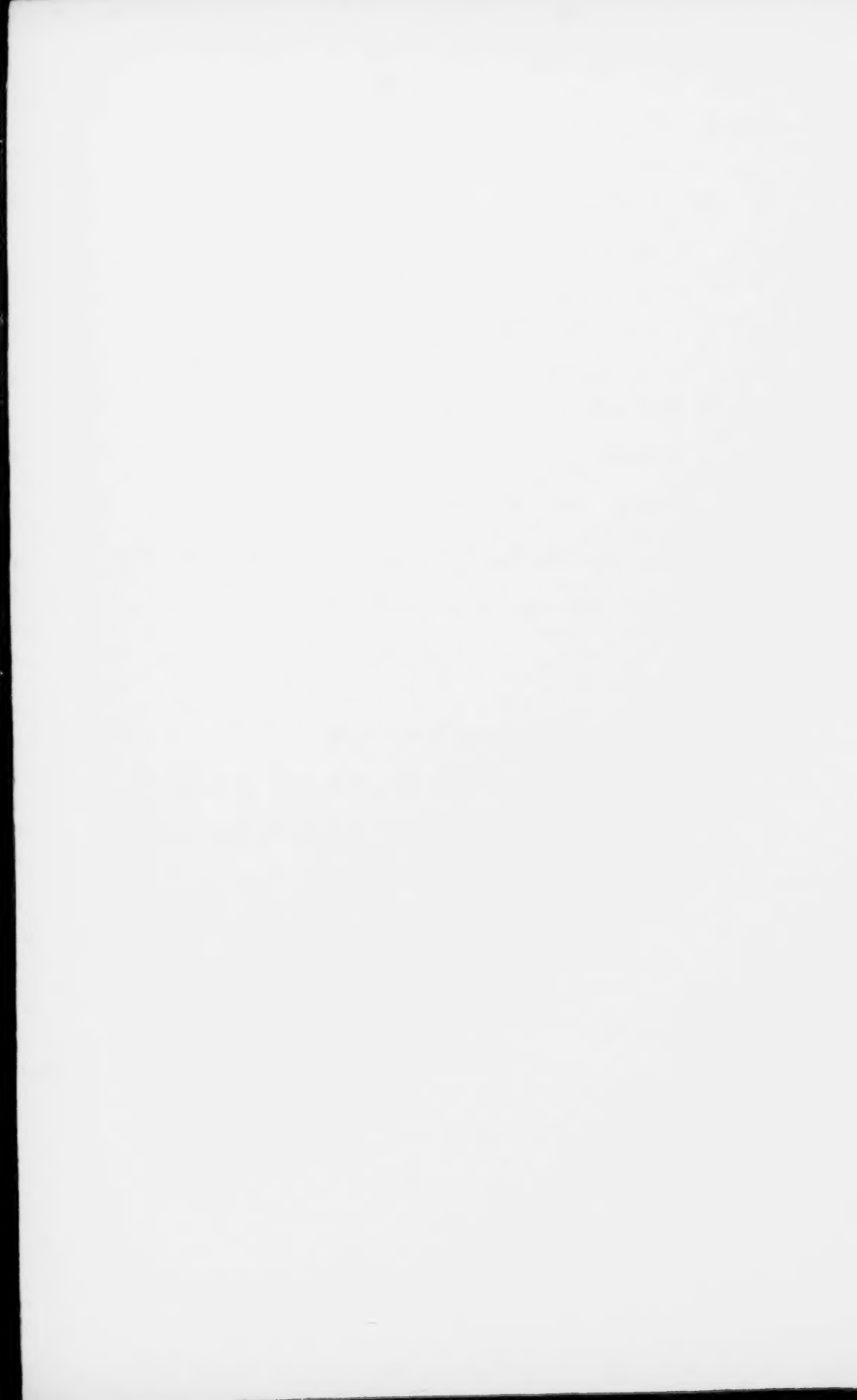
APRIL 26, 1990

GILBERT F. GANUCHEAU,  
CLERK









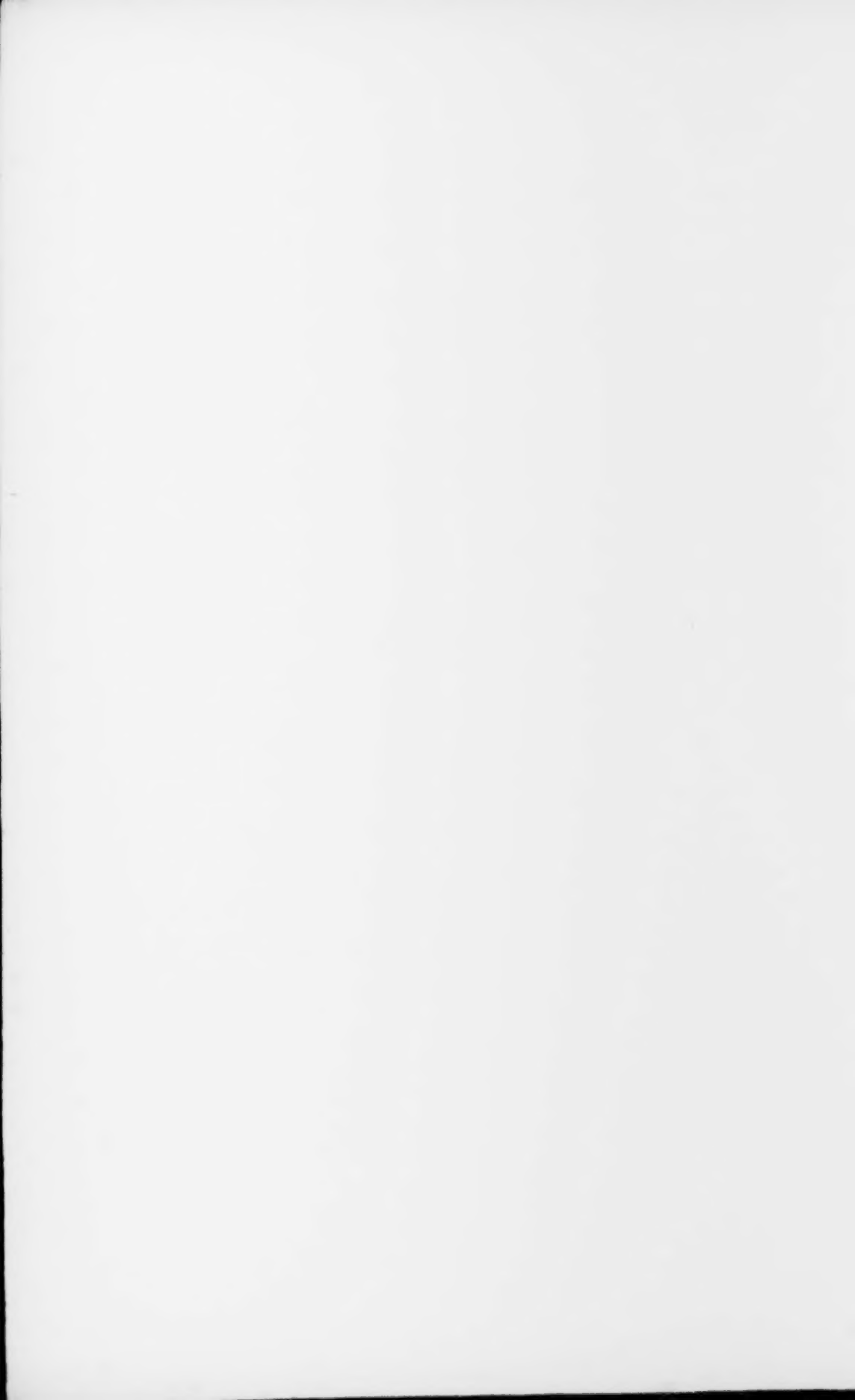
deceased, to strike the Clerk's authorization extending time for appellant to file a petition for rehearing to and including April 11, 1990 is DENIED.

/s/ Edith H. Jones

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JUDGE EDITH H. JONES  
UNITED STATES CIRCUIT JUDGE

U.S. COURT OF APPEALS  
F I L E D  
April 3, 1990  
GILBERT E. GANUCHEAU,  
CLERK



Vol. 142 P. 950

F I L E D

SEPT. 13, 1974

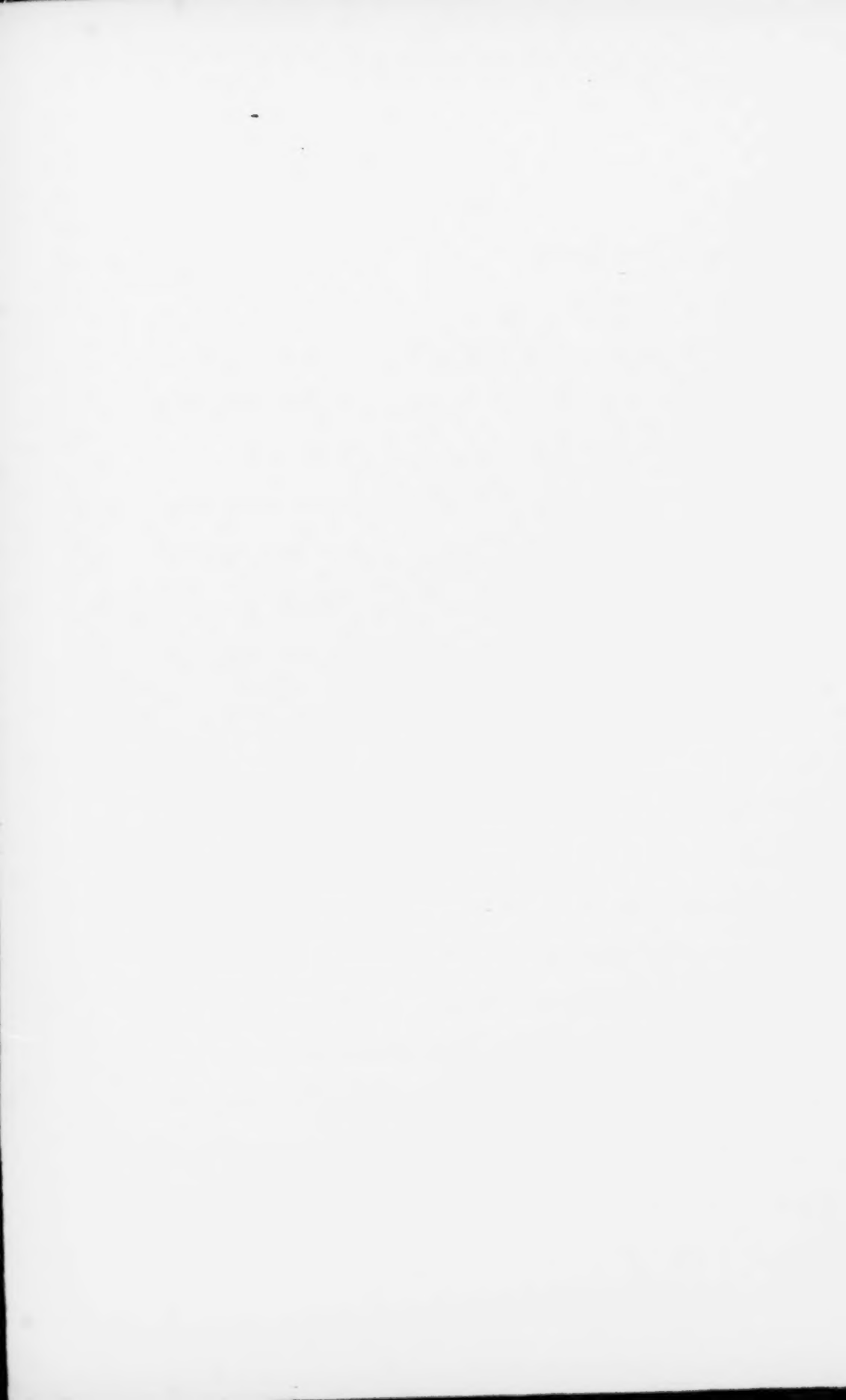
- 7989 -

THE STATE OF TEXAS

COUNTY OF BOSQUE

"That I, CHARLIE CATLETT, a single man, now a resident of the County of Bosque, and the State of Texas, being in good health commensurate with my age, of sound and disposing mind and memory and above the age of eighteen years, do make and publish this my last will and testament, hereby revoking all wills by me heretofore made. . . . .

SECOND: I give and bequeath to my brother, ERNEST LUTHER CATLETT, for and during his natural life all of my property, real, personal and mixed, he the said ERNEST LUTHER CATLETT to have the use and benefit of all of my lands, particularly those located in Denton County, Texas, to have the installment payments of principal on the Vendor's lien Note due from R. E. CLARK, JR., together with interest thereon as it accrues during his natural life, and at his death all of



said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in the County of Tarrant, Texas.

It is my intention to provide a reasonable income for my brother, ERNEST LUTHER CATLETT, during his lifetime, and at his death for all of the rest, residue and remainder of my property of whatever kind, sort, classification or category, which shall remain upon his death to be inherited in fee simple by my brother, PHARON CRAWFORD CATLETT. . . . . "

THIRD:

(Plaintiff's Exhibit "A" in "Wiley's" Complaint filed April 16, 1987 in the United States District Court, For The Eastern District of Texas, Sherman Division. No. S-87-83-CA.)

Vol. 142 page 950 - 953; FILED, SEP. 13, 1974  
Mary Jo Hill, County Clerk, Denton County, Tx.

(See Exhibit "J", C. of A. pages 1, 2, & 3 of that exhibit "J" for "Wiley's" position regarding the construction of that SECOND PROVISION of "Charlie Catlett's Will"

November 9, 1984 "A true and correct copy  
MARY JO HILL, County Clerk, Denton County,  
Texas





LAW OFFICES OF JOHN R. LIVELY  
1130 FORT WORTH CLUB TOWER  
FORT WORTH, TX. 76102

December 16, 1980

Mr. R. David Broiles  
Brown, Herman, Scott, Dean and Miles  
203 Fort Worth Club Building  
Fort Worth, TX. 76102

Re: Number 236-39718-76  
M. WILEY CATLETT, ADMINISTRATOR  
OF THE ESTATE OF ERNEST LUTIER  
CATLETT, DECEASED v. FLORENCE IONA  
CATLETT, EXECUTRIX OF THE ESTATE OF  
PHARON C. CATLETT, ET AL.

Dear David:

Enclosed is a copy of a draft of a proposed Judgment in the above numbered and entitled cause which I would appreciate your reviewing and adding your comments thereto. As you can tell, the Judgment does not recite the legal description at this point, and I will rely upon Mr. Trickey to furnish this. I am of the opinion that the settlement will need to be approved by the Tarrant County Probate Court, and I would appreciate your filing an application to secure such approval as soon as possible.

I am also enclosing copies of the tax statements from Denton County and a copy of a letter from the Aubrey Independent School District with regard to taxes on the land for the years 1974 to the present time, which total \$3,725.46. Your client's portion of this is \$620.91.



I am also enclosing my trustee account check payable to the Estate of Ernest Luther Catlett, Deceased, (NOTE: IT WAS NOT ENCLOSED) in the sum of \$1,233.33, which represents one-sixth of the award. Although Mr. Catlett was not represented at the hearing. Mrs. Catlett retained me to represent her, and my representation had some direct (NOTE: NOT SO) benefit for Mr. Catlett. My fee arrangement with Mrs. Catlett was that I would charge one-third of the amount in excess of the condemnor's offer. The condemnor's offer was \$3,500.00, (NOTE: WILEY HAD CORRESPONDENCE WITH THE ATTORNEY FOR THE BRAZOS ELECTRIC POWER COOPERATIVE, INC. Mr. R. Scott Moran of Mills, Riley & Moran, P.O. Box 7872, Waco, Tx. 76710. And WILEY HAS A LETTER OFFERING \$7,400.00 which WILEY & FLO COULD HAVE SHARED IF SHE HAD ACCEPTED THAT OFFER, so LIVELY CHARGED HIS CLIENT, "FLO" for unnecessary work.) and the final settlement was \$7,400.00, so by my calculations, I should receive a fee in the amount of \$1,300.00. Although I did not represent Mr. Catlett, I think it would be proper for him to pay one-sixth of my fee, or \$216.00.

I have talked with Mr. Trickey regarding the discrepancy in acreage, and it appears to me that we are unable to explain it in terms of conveyances. It appears that the only way we can resolve the acreage discrepancy is to have the land surveyed. Since the need for a survey is caused by your client, it would appear to me that he should pay more than one-sixth of the expenses.

Last week end, I went to Aubrey and examined the property with a man by the name of J. R. Wilson. Mr. Wilson indicated that he



would be interested in purchasing for cash approximately thirty-five acres on the north side of F.M.428. If your client is interested in discussing this sale with Mr. Wilson, he should contact him immediately and see if the sale can be arranged. If this sale can be arranged, it would not be necessary to have all the partition language in the Judgment, and Mr. Catlett could be awarded a specific portion of the tract.

I would appreciate your having your client reimburse Mrs. Catlett for the taxes in the sum of \$620.91 as soon as possible, and I would also appreciate your discussing my fee arrangement with your client.

Very truly yours,

/s/ John

---

JOHN R. LIVELY

JRL:le  
Enc.

(See, Plaintiff's complaint Ex. "B" therein.)  
F.R.C.P., Rule, 10(c)

—

BROWN, HERMAN, SCOTT, DEAN & MILES  
ATTORNEYS AND COUNSELORS AT LAW  
Suite 203 Fort Worth Club Building  
Fort Worth, Texas 76102

The Honorable Robert Burnett      Dec. 17, 1980  
Probate Court  
Tarrant County Courthouse  
Fort Worth, TX 76102

RE:    Cause No. 77-2726  
      The Estate of Ernest Luther  
      Catlett, Deceased

---

Dear Judge Burnett:

Enclosed please find an Application to Approve a Settlement, which was entered into after we commenced trial in the 236th District Court. The sole beneficiary of this Estate is the Administrator, M. Wiley Catlett, who resides in Illinois. I would like to present this Motion to the Court for review and approval, and have attached a proposed Order for your consideration. If this settlement meets with your approval, then we will enter the Final Judgment. The only thing lacking between the proposed Judgment and the Final Judgment is the legal description, which is being furnished by a title company in Denton.

I will contact your office concerning the hearing on this matter.

Very truly yours,

/s/      R. David Broiles

RDB:js  
Encl. as stated

FILED DEC. 22, 1980  
PROBATE DEPT.  
County Clerk, Tarrant Co., Tx.





CAUSE NO. 77-2726

IN RE: THE ESTATE OF     IN THE COUNTY COURT  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TX.  
DECEASED                     SITTING IN PROBATE

MOTION TO APPROVE SETTLEMENT

TO THE HONORABLE COURT:

COMES NOW the Administrator, M. Wiley Catlett, and makes application to the Court to approve a settlement of a disputed claim, and in support thereof would show the Court as follows:

## I.

On October 17, 1977, this Court approved the Application of the Administrator to continue the prosecution of litigation filed on behalf of the estate of ERNEST LUTHER CATLETT. Said litigation related to the following item:

1. A claim to recover the interest of ERNEST LUTHER CATLETT in certain property located in Denton County, Texas.
2. A litigation to recover sums allegedly converted by PHARON CATLETT, which should have been paid to ERNEST LUTHER CATLETT under



the Will of CHARLIE CATLETT.

II.

On December 4, 1979 the Court approved the employment of R.David Broiles to prosecute this suit and approved the employment contract entered into between the Administrator and said attorney.

III.

Attached hereto and incorporated herein is a form of a proposed Judgment to be entered in the 236th Judicial District Court in Cause No. 236-39718-76, styled M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, VS. FLORENCE IONA CATLETT, EXECUTRIX OF THE ESTATE OF PHARON C. CATLETT AND FLORENCE CATLETT, SAID Judgment was entered after four (4) days of trial, in which the Plaintiff presented his case. Said Judgment reflects an agreement entered into by the Administrator in settling the above-styled case short

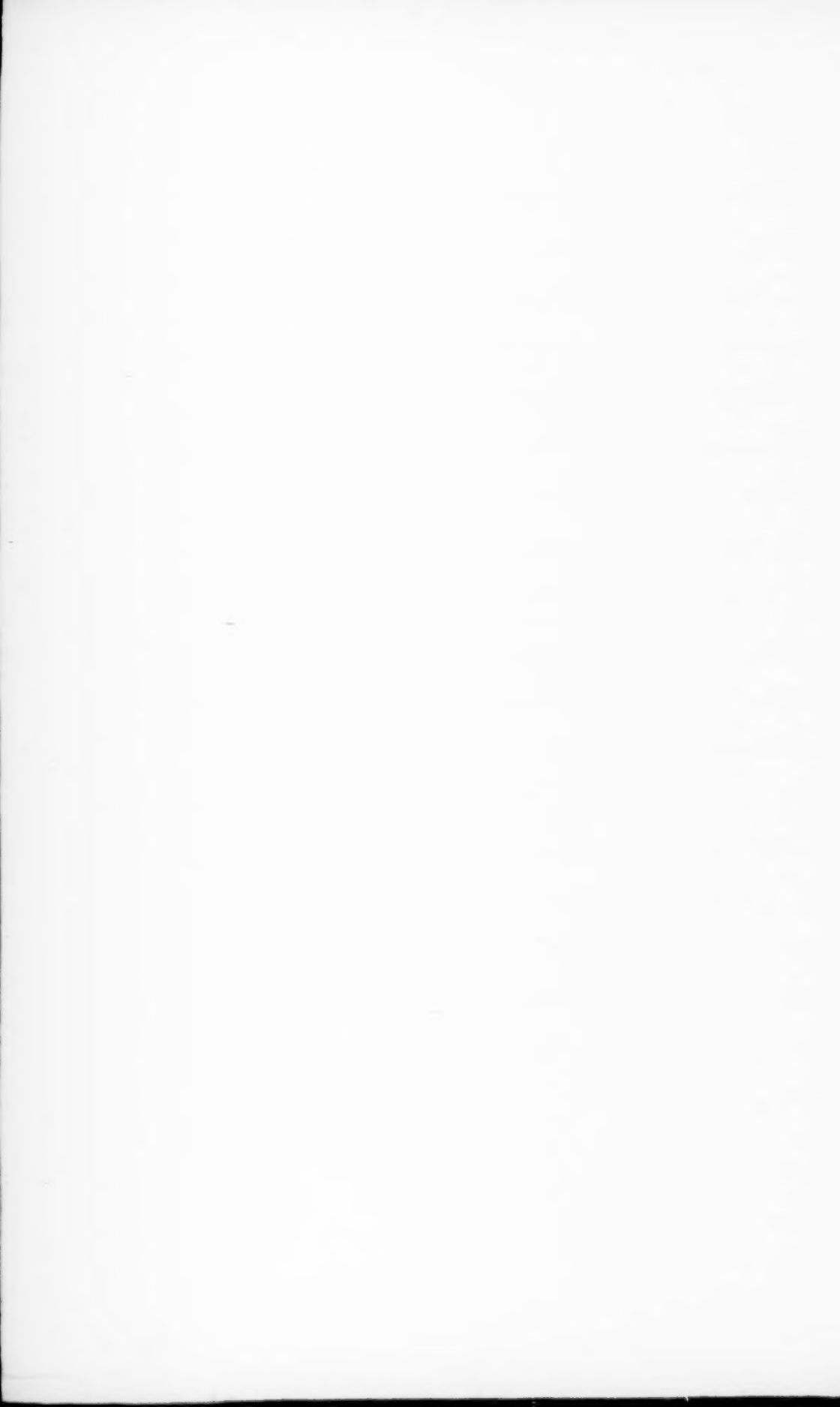


of verdict and Contested Judgment.

Said Judgment is fair to the Estate and is a favorable Judgment for the Plaintiff. Plaintiff has recovered all of the interest of ERNEST LUTHER CATLETT, Deceased, in the real property, which was the subject matter of the lawsuit. In consideration of said recovery of a one-sixth ( $1/6$ ) interest in said real estate, the Plaintiff has abandoned and compromised the claims to recover certain funds which were allegedly converted by PHARON CATLETT.

#### IV.

Settlement is fair and in the best interest of the Estate. The Applicant/Administrator prays that this Court will approve said settlement, and enter an Order authorizing the entry of the Judgment attached hereto in a final form.



WHEREFORE, PREMISES CONSIDERED, the Applicant prays that this request be approved.

Respectfully submitted,

BROWN, HERMAN, SCOTT, DEAN & MILES  
203 FortWorth Club Building  
Fort Worth, Texas 76102  
(817) 332-1391 Metro 429-0851

/s/

By R. David Broiles

---

R. David Broiles

ATTORNEYS FOR APPLICANT,  
M. WILEY CATLETT, ADMINISTRATOR





F I L E D  
Mar. 12, 1981

NUMBER 77-2726

IN RE: THE ESTATE OF        IN THE COUNTY COURT OF  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TEXAS  
DECEASED                       SITTING IN PROBATE

RESPONSE TO ADMINISTRATOR'S  
MOTION TO APPROVE SETTLEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES THE ESTATE OF PHARON C. CATLETT,  
DECEASED and files this, its Response to  
Motion to Approve Settlement previously filed  
herein, and for such Response would respect-  
fully show the Court the following:

I.

THE ESTATE OF PHARON C. CATLETT, DECEASED,  
is a Defendant in Cause Number 236-39718-76,  
styled M. WILEY CATLETT, ADMINISTRATOR OF THE  
ESTATE OF ERNEST LUTHER CATLETT, DECEASED v.  
FLORENCE IONA CATLETT, EXECUTRIX OF THE ESTATE  
OF PHARON C. CATLETT, ET AL., in the 236th  
Judicial District Court of Tarrant County,



Texas. On November 17, 1980, said case was called to trial, and the attorneys for the parties, prior to the jury returning a verdict, reached an agreement to settle all matters in dispute. On November 20, 1980, the settlement agreement was dictated in open court in the presence of the parties, and after the attorneys had agreed to the settlement, the Court inquired of the parties as to whether they approved and agreed to said settlement, to which the parties responded affirmatively. The Judge of the 236th Judicial District Court of Tarrant County, Texas, then approved the settlement agreement of the parties.

## II.

On December 22, 1980, the Administrator, by and through his attorney, filed a Motion to Approve Settlement, and said Motion is presently pending before the Court.

## III.

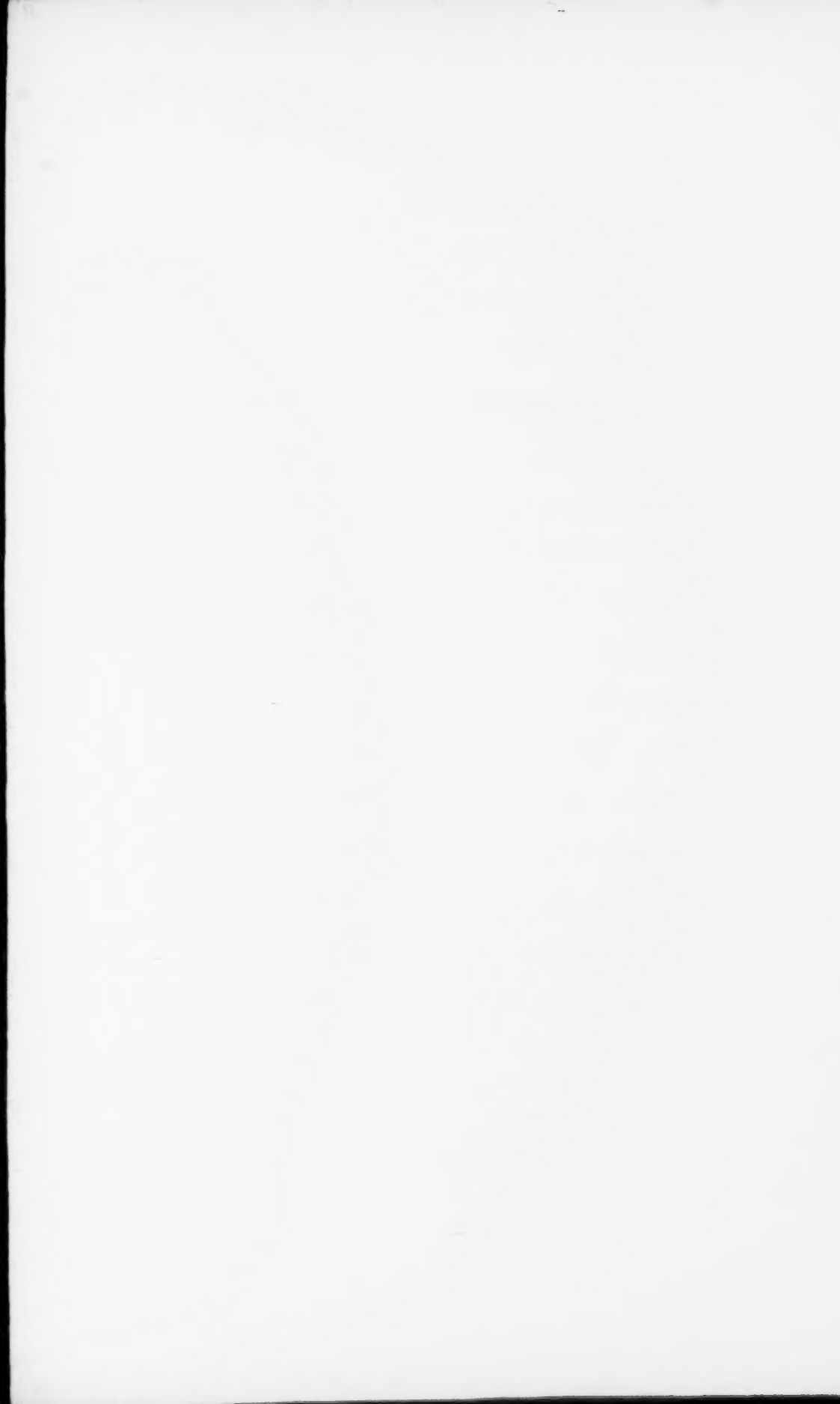


Attached to this Response as Exhibit "A" is a true and correct copy of a proposed Judgment prepared by the undersigned attorney which sets forth the agreement of the parties on November 20, 1980, in Cause Number 236-39718-76. The undersigned attorney would show the Court that it is necessary that this Court examine and approve said settlement on behalf of the Estate before the attached Judgment can be entered in Cause Number 236-39718-76.

WHEREFORE, THE ESTATE OF PHARON C. CATLETT, DECEASED prays that the Administrator's Motion to Approve Settlement and this Response be set for hearing, and that on hearing hereof this Court approve the settlement that has been entered into by and between the parties and their attorneys.

CERTIFICATE  
OF  
SERVICE

LAW OFFICES OF JOHN R. LIVELY  
1130 Fort Worth Club Tower  
Fort Worth, Tx. 76102  
/s/ John R. Lively  
Attorney for THE ESTATE OF  
PHARON C. CATLETT, DECEASED



NUMBER 77-2726

IN RE: THE ESTATE OF      IN THE COUNTY COURT OF  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TEXAS  
DECEASED                      SITTING IN PROBATE

CLAIM AGAINST THE ESTATE OF ERNEST LUTHER  
CATLETT, DECEASED

TO: THE ESTATE OF ERNEST LUTHER CATLETT,  
DECEASED, by and through its duly  
appointed agent, Mr. Michael R.  
Burkett, 102 Oil and Gas Building,  
Fort Worth, Texas 76102.

Now comes THE ESTATE OF PHARON C. CAT-  
LETT, DECEASED, and makes this claim, pur-  
suant to a Judgment rendered by the 236th  
District Court of Tarrant County, Texas,  
in Cause Number 236-39718-76, styled M. WILEY  
CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST  
LUTHER CATLETT, DECEASED v. FLORENCE IONA  
CATLETT, EXECUTRIX OF THE ESTATE OF PHARON C.  
CATLETT, ET AL., in which cause of action it  
was adjudged that the Estate of Ernest Luther  
Catlett was the owner of an undivided one-  
sixth (1/6) interest in and to five (5) tracts





of land located in Denton County, Texas. Claimant has paid the Tax Assessor-Collector of Denton County, Texas, ad valorem taxes on said properties for the years 1974 through 1980, which payments included the payment on the undivided one-sixth (1/6th) interest adjudicated to be owned by the Estate of Ernest Luther Catlett, Deceased. Claimant now asks reimbursement in the amount of Six Hundred Forty-two and 47/100 Dollars (\$642.47), said sum representing the sums expended by the Claimant on behalf of the Estate of Ernest Luther Catlett, Deceased.

LAW OFFICES OF JOHN R. LIVELY  
1130 Fort Worth Club Tower  
Fort Worth, Texas 76102  
(817) 338-1616

/s/ John R. Lively

---

JOHN R. LIVELY  
Attorney for Claimant  
State Bar I.D. #12435000

THE STATE OF TEXAS x  
COUNTY OF TARRANT x



BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. LIVELY, who, being by me first duly sworn, upon oath, deposes and says that he is the attorney for the Claimant, The Estate of Pharon C. Catlett, Deceased, and authorized to make this Affidavit: that he has read the above and foregoing Claim Against the Estate of Ernest Luther Catlett, Deceased; that each and every statement contained therein is true and correct; that said claim is due and owing to Claimant; that all just and lawful offsets, payments, and credits have been allowed.

/s/ John R. Lively

SUBSCRIBED AND SWORN TO BEFORE ME by the said JOHN R. LIVELY on this the 13th day of May, 1981, to certify which witness my hand and seal of office.

/s/ Linda Endelrock

NOTARY PUBLIC in and for  
Tarrant County, Texas

CERTIFICATE OF SERVICE

This is to certify that I have on this the 13th day of May, 1981, hand delivered a true and correct copy of the above and foregoing Claim Against the Estate of Ernest Luther Catlett, Deceased, to the agent for the Estate, Mr. Michael R. Burkett.

/s/ John R. Lively



NUMBER 77-2726

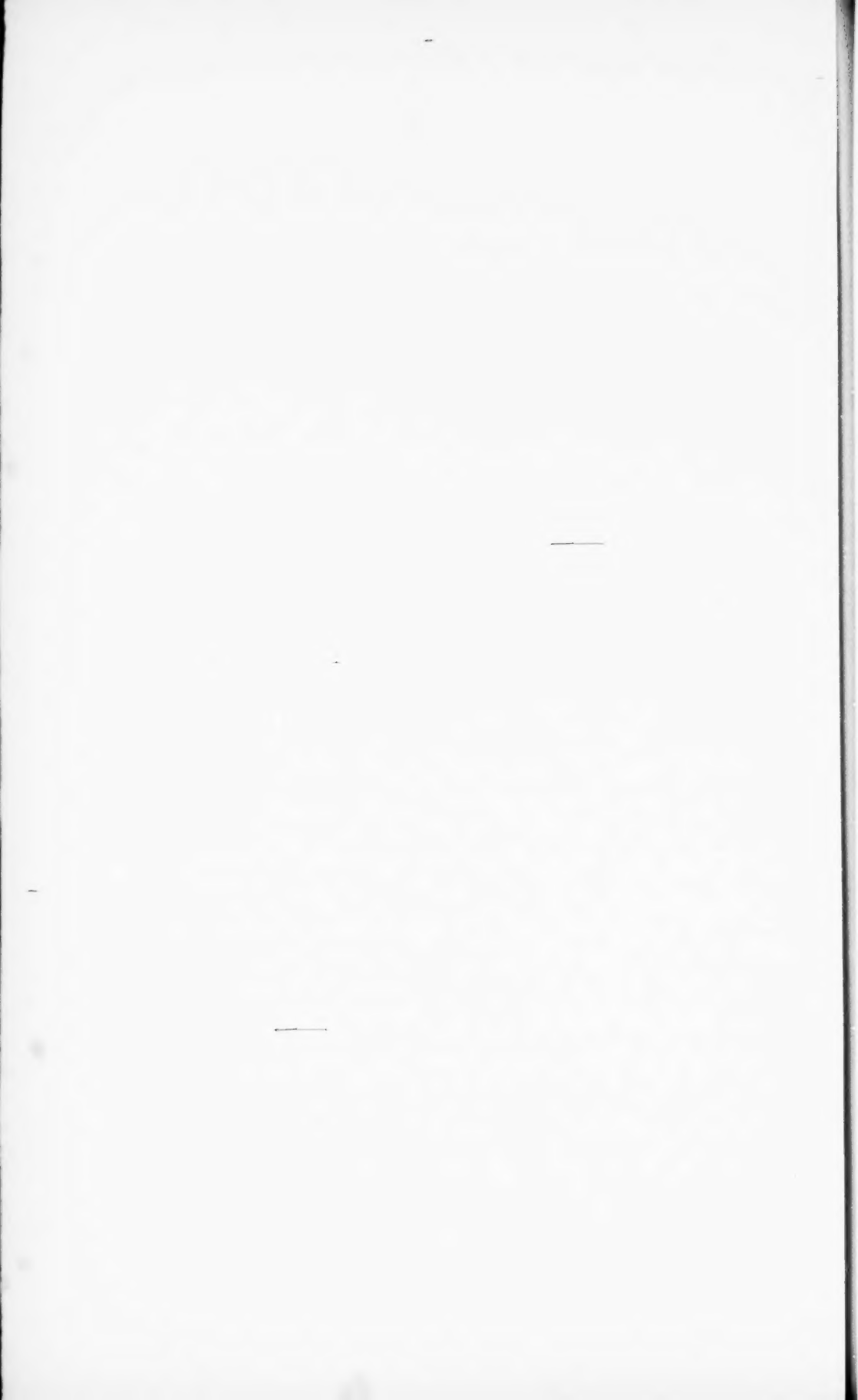
IN RE: THE ESTATE OF IN THE COUNTY COURT OF  
ERNEST LUTHER CATLETT, TARRANT COUNTY, TX.

DECEASED

SITTING IN PROBATE

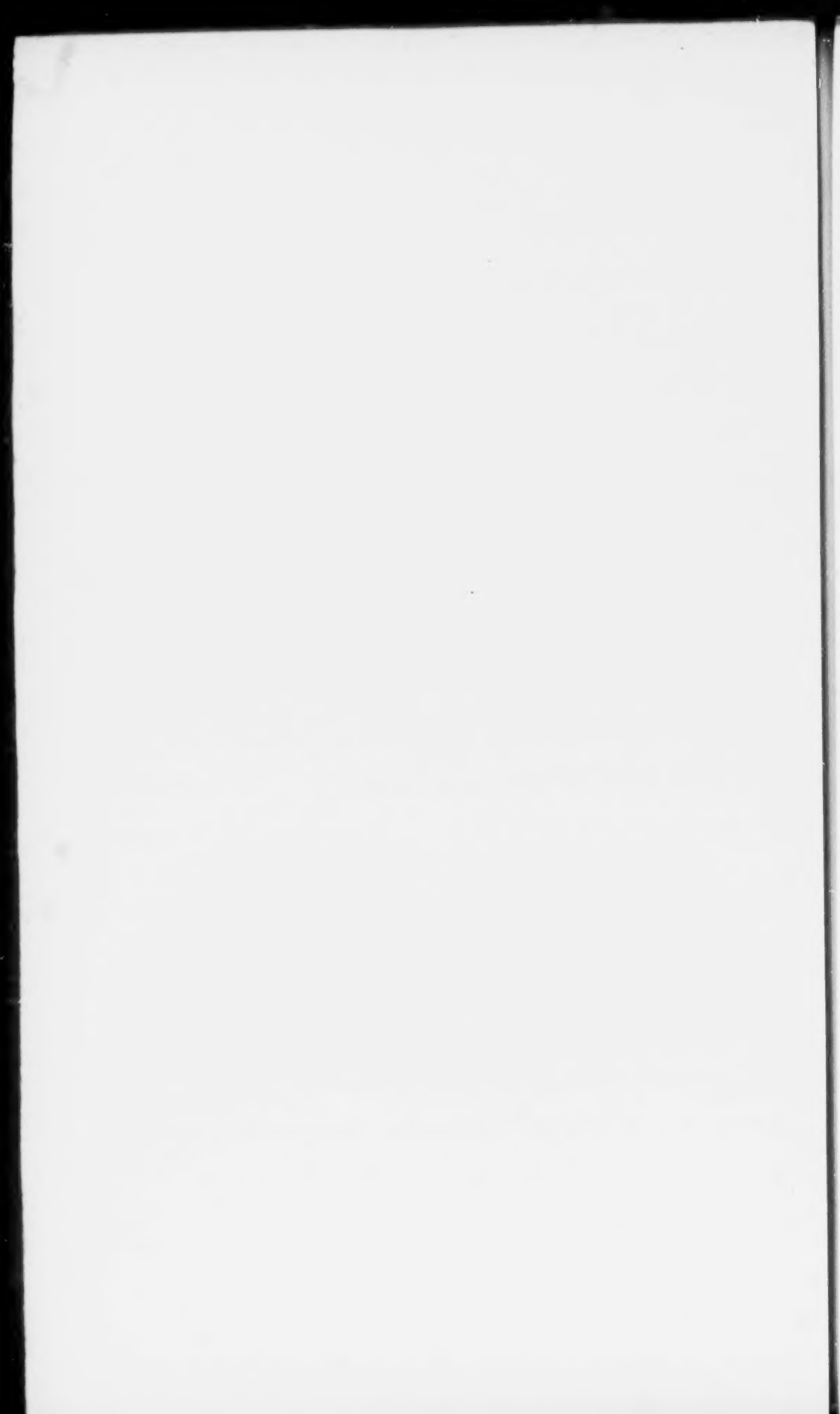
ORDER CONFIRMING SETTLEMENT

On the 13th day of May, 1981, came on to be heard the Administrator's Motion to Approve Settlement, the Respondent's Response to Administrator's Motion to Approve Settlement, and the Counter-Movant's Motion to Approve Settlement. The Court, having been satisfied that proper notice has been given to all parties in interest and having heard the evidence and argument of counsel concerning said settlement finds that the settlement is fair and in the best interest of the Estate, and the Court further finding that the settlement as set forth in the proposed Judgment attached to Respondent's Response to Administrator's Motion to Approve Settlement was made in open court and entered of record and



requested that the Judge of the 236th District Court approve said settlement, and that said attorneys also requested that the Court approve said settlement, and the trial court having determined that the settlement was fair and equitable and that the parties had entered into said settlement knowingly and freely, the Judge of the 236th District Court approved said settlement as the rendered Judgment of the Court, and this Court finds that the settlement as set forth in the proposed Judgment attached to Respondent's Response to Administrator's Motion to Approve Settlement should be Approved, confirmed, and ratified.

It is therefore ORDERED, ADJUDGED and DECREED that the settlement as set forth in the proposed Judgment attached to Respondent's Response to Administrator's Motion to Approve Settlement in Cause Number 236-39718-76, Styled M. WILEY CATLETT, ADMINISTRATOR OF THE





ESTATE OF ERNEST LUTHER CATLETT, DECEASED v.  
FLORENCE IONA CATLETT, EXECUTRIX OF THE  
ESTATE OF PHARON C. CATLETT, ET AL, shall be  
and is APPROVED, CONFIRMED and RATIFIED.

SIGNED this the 14th day of May, 1981.

/s/ Robert M. Burnett

---

JUDGE PRESIDING

A CERTIFIED COPY

ATTEST: 2-25-83  
J. W. BOORMAN  
District Clerk, Tarrant  
County, Texas

By Arnett Bruitt



NUMBER 81-8158-B

FLORENCE IONA  
CATLETT

IN THE DISTRICT COURT

DENTON COUNTY, TEXAS

vs.

158th JUDICIAL DIST.

M. WILEY  
CATLETT, ET AL

ORDER FOR SANCTIONS AND DEFAULT INTERLOC-  
UTORY JUDGMENT ORDERING PARTITION AND  
APPOINTING COMMISSIONERS

On the 10th day of September, 1982,  
came on to be heard FLORENCE IONA CATLETT,  
Plaintiff, Motion for Sanctions for failure  
of Party to Appear for Depositions in Vio-  
lations of Court Order in the above enti-  
tled and numbered cause. Plaintiff appeared  
by attorney of record and announced ready. M.  
WILEY CATLETT, Defendant, appeared by attorney  
of record and announced ready. After hearing  
evidence and argument of counsel, the court  
is of the opinion and finds that:

1. Defendant, M. WILEY CATLETT, ADMIN-  
ISTRATOR OF THE ESTATE OF ERNEST LUTHER CAT-  
LETT, is in violation of this Court's order



dated and signed August 25, 1982, in that M. WILEY CATLETT, in violation of this Court's order, did fail to produce documents which he claimed to be privileged for inspection in camera at 8:30 o'clock A.M. on August 31, 1982, and that he failed to make himself immediately available for deposition at a location selected by Plaintiff's counsel and that he failed to produce items requested in Plaintiff's Notice of Deposition dated July 22, 1982, and that M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, is in violation of this Court's order dated and signed September 1, 1982, in that he failed to appear for deposition at the offices of Plaintiff's attorney, Suite 1130, Fort Worth Club Tower, 777 Taylor St., Fort Worth, Tarrant County, Texas, at 3.00 o'clock P.M. on September 2, 1982.

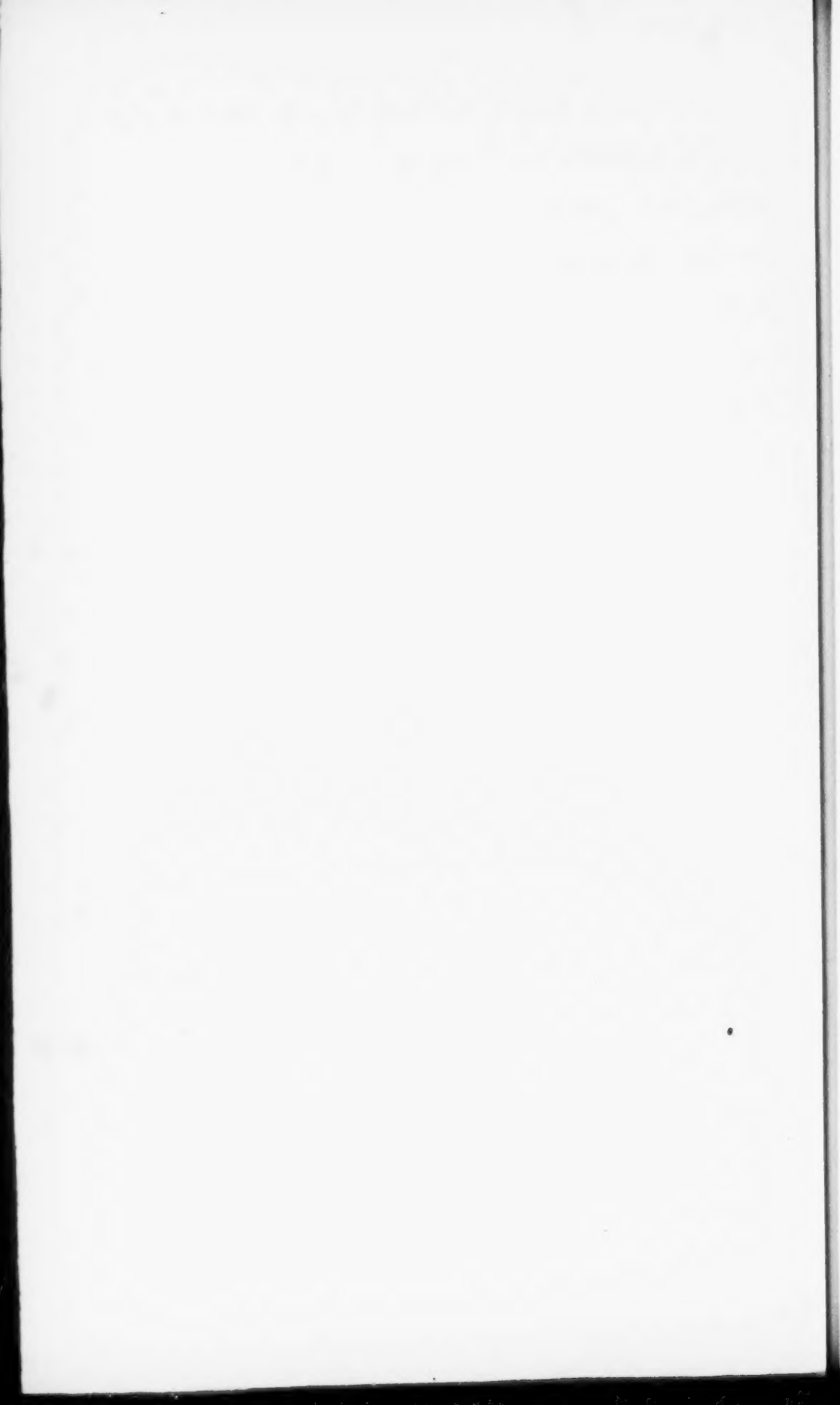
2. The Court further finds that Defendant, M. WILEY CATLETT'S, failure to comply both Court orders was willful and without meritorious excuse.



3. The Court further finds that Plaintiff's costs of filing and hearing this Motion, including reasonable attorney's fees, is Six Hundred Fifty Dollars (\$650.00), and that same should be assessed against the Defendant, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, as sanctions.

4. The Court further finds that as sanction for the willful failure of M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, to comply with this Court's proper orders that Defendant's, M. WILEY CATLETT, Original Answer, First Amended Original Answer, and First Supplemental Answer are ordered stricken forthwith.

5. The Court further finds that as sanction for the willful failure of M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, to comply with this Court's proper orders that the Plaintiff, FLORENCE IONA CATLETT, should be granted an





interlocutory default judgment as prayed for in her First Original Petition, said interlocutory default judgment order a partition of the following described property:

All that real property located in Denton County, Texas, owned by Florence I. Catlett and being more particularly described as follows:

FIRST TRACT: All of the following described real estate situated in Denton County, Texas, about 1/2 mile West of the town of Aubrey, Texas, containing 77.93 acres, more or less, and consisting of the following surveys and parts of surveys, to-wit:

BEING 80 acres of land out of the Dennis Cowan Survey;

BEGINNING at the Northwest corner of said Cowan Survey, same being also the Southwest corner of the J. M. Fischer Survey;

THENCE East 713-1/2 varas, stake for corner;

THENCE South 633 varas corner;

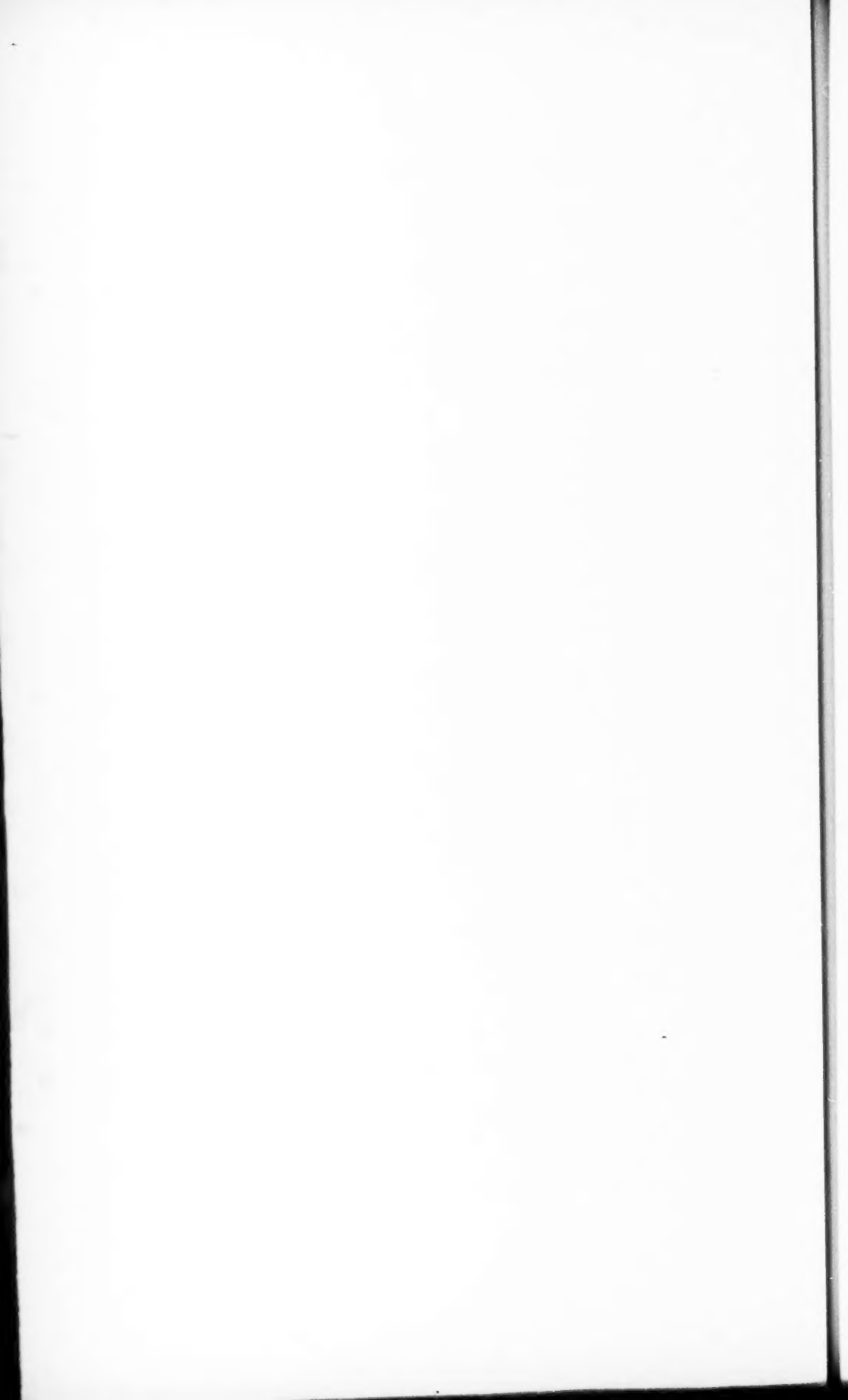
THENCE West 713 1/2 varas corner, the West Boundary Line of said Cowan Survey;

THENCE North 633 varas to the place of beginning containing 80 acres of land, described in Deed of record in Volume 67, Page 172, Deed Records, Denton County, Texas.

SAVE AND EXCEPT:

BEING a tract of land lying partially in the John Jordan Survey, Abstract No. 678, and the Dennis Cowan Survey, Abstract No. 304, owned by C. E. Catlett;

BEGINNING at the Northwest corner of the above said tract, said corner being survey station 543 plus 47;



THENCE South along the West boundary line of said tract to a point 50 feet opposite and at right angles to the center line of said Highway;

THENCE North 89 degrees 41 minutes East along a line 50 feet distant from and parallel to the center line of said Highway to a point 50 feet opposite and at right angles to survey station 554 plus 50;

THENCE in an Easterly direction along a line 50 feet distant from and parallel to a 1 deg. curve to the right to a point 50 feet opposite and at right angles to survey station 555 plus 50;

THENCE South 88 degrees 19 minutes East along a line 50 feet distant from and parallel to the location line of said Highway to a point in the East boundary line of said tract;

THENCE North along the East boundary line of said tract to its Northeast corner, said corner being 10 feet South, more or less, from survey station 562 plus 25;

THENCE North 88 degrees 19 minutes West along the North boundary line of said tract to survey station 555 plus 00;

THENCE South 89 degrees 41 minutes West along the North boundary line of said tract to the point of beginning and containing 2.07 acres. more or less, 1.24 acres being within the limits of the present right-of-way as shown by right-of-way map on file with the state Highway

Engineer and another on file with the County Clerk of Denton County, Texas, and bearing date of January, 1931.

SECOND TRACT: Being a tract of land of which J. L. Catlett was the original owner and patentee, said land being conveyed to said J. L. Catlett by patent No. 294, vol 1, dated Nov. 18, 1881, recorded in Records of Denton County, Texas, on February 23, 1882, to which record reference is made herein for a full description of said land



THIRD TRACT: Being a part of the George Lane Survey in Denton County, Texas, described as follows:

BEGINNING at the SE corner of the 320 acre survey in the name of P. H. Vizer;  
THENCE East 433 varas to a post oak blazed on four sides;  
THENCE North 712 1/2 varas a stake for corner on the EB line of the said George Lane Survey;  
THENCE West 433 varas a stake in the WB line of the said George Lane Survey;  
THENCE South 712 1/2 varas to the place of beginning, containing 54 1/2 acres of land more or less, being the same land conveyed to J. L. Catlett by Thos. B. Cagle and wife, Deed recorded in Volume 31, Page 566, Denton County Deed Records, to which reference is here made .

FOURTH TRACT: Being 54 acres of land in Denton County, Texas, a part of the Stephen Cantwell 160 acre survey, described as follows:

BEGINNING at the SW corner of the said Cantwell Survey;  
THENCE East 540 varas to the SE corner of the said Cantwell Survey;  
THENCE North 566 varas to John C. Wilson's south line;  
THENCE West 540 varas;  
THENCE South 566 varas to the place of beginning, being the same land conveyed to J. L. Catlett by J. G. Loudder and wife, S. A. Loudder, on November 12, 1880. Deed of record Book P. Pages 550 and 551, of Denton County Deed Records to which reference is here made.

FIFTH TRACT: Being a part of the John Jordan Survey in Denton County, Texas, and described as follows, to-wit:

Tract of 50 acres in the north end of the



John Jordan Survey and bounded as follows,  
to-wit:

BEGINNING at the NW corner of said Jordan Survey;

THENCE East 1179 varas to the NE corner of the same to a stake from which a Post Oak marked X bears S 20 degrees E 5 varas and another marked H, bears 7 varas;

THENCE South 339  $\frac{4}{10}$  varas to a stake;

THENCE West 1179 varas to a stake on the West line of the Jordan Survey;

THENCE North 339  $\frac{4}{10}$  varas to the place of beginning, found in Deed Records, Book Y, Page 50, Deed Records, Denton County, Texas.

6. The Court finds that the Plaintiff, FLORENCE IONA CATLETT, owns an undivided five sixths ( $\frac{5}{6}$ ) interest in fee simple in said property; that the ESTATE OF ERNEST LUTHER CATLETT, being administered by M. WILEY CATLETT, owns an undivided two-fifteenths ( $\frac{2}{15}$ ) interest in fee simple in said property; and that Defendant, R. DAVID BROILES and the law firm of Brown, Herman, Scott, Dean & Miles, a Partnership, owns an undivided one-thirtieth ( $\frac{1}{30}$ ) interest in fee simple in said property.

7. The Court finds that the whole of the said property is susceptible to fair and

7



equitable partitioning between the parties so as to reflect their respective interests,

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

1. Plaintiff, FLORENCE IONA CATLETT, be awarded Judgment in the sum of Six Hundred Fifty Dollars (\$650.00) as and for her costs and attorney's fees incurred in connection with this Motion against M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, said sum shall be paid in the due course of administration.

2. Defendant's, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, First Original Answer, First Amended Original Answer, and Supplemental Answer are ordered stricken forthwith.

3. Plaintiff, FLORENCE IONA CATLETT, shall have and recover from Defendant, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, a default



Judgment as prayed for in her First Original Petition and that the property above described shall be partitioned between Florence Iona Catlett, The Estate of Ernest Luther Catlett, Deceased, and R. David Broiles and the law firm of Brown, Herman, Scott, Dean & Miles, a Partnership, such that the values of the parcels allotted to each party reflect the party's interest as recited above.

4. It is further ORDERED that J.A. Hinsley, Tom J. Fouts, and Ms. Pat Wilson, competent and disinterested persons are appointed commissioners to make and partition in accordance with this Decree and the law, and when the partition is completed, to report in writing and under oath of this Court by the 10th day of November, 1982.

5. It is further ORDERED that Mr. J. C. Green of Schoell Fields & Associates is appointed surveyor for the purpose of assisting the above named Commissioners in making the partition.



6. It is further ORDERED that the Clerk of this Court shall issue a Writ of Partition directing the Sheriff or any Constable of Denton County, Texas, commanding such Sheriff or Constable to notify each of the above named Commissioners and surveyor of their appointment. The Clerk shall accompany such Writ with a certified copy of this decree.

7. It is further ORDERED that hearing is set for September 28, 1982, before this Court for the purpose of determining the rights of reimbursement for contributions to the preservation of the property the subject of this partition, for adjusting the rights and equities between the parties in the partition of the property, and for the purpose of determining R. DAVID BROILES' reasonable and necessary attorney's fees incurred in this matter.

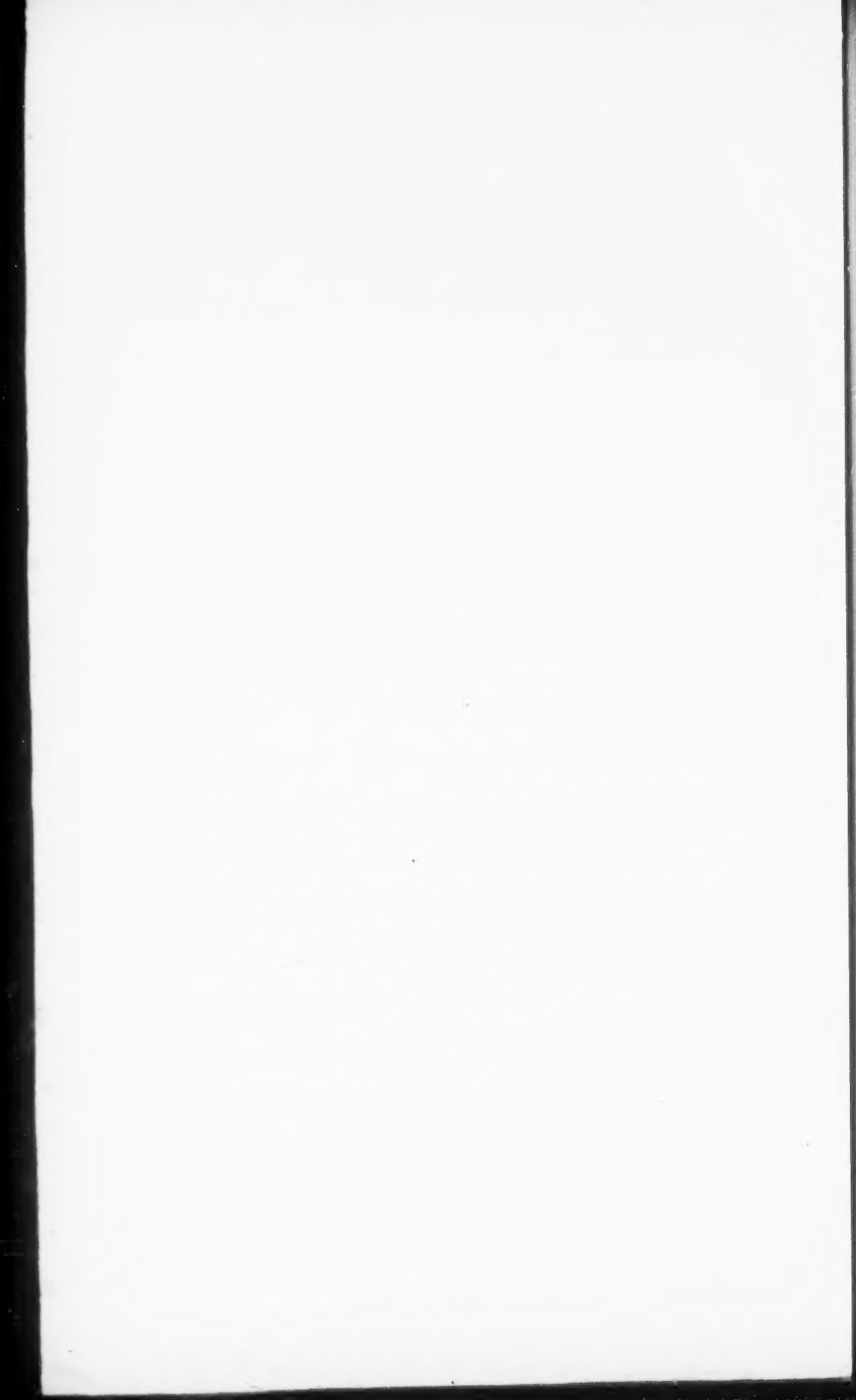
SIGNED this the 4th day of October, 1982.

JOHN NARSUTIS, JUDGE

JUDGE PRESIDING

CERTIFIED A TRUE COPY

Gladys Whetten  
District Clerk, Denton County,  
Texas by Villa Hughes, Deputy



NUMBER 81-8158-B

FLORENCE IONA  
CATLETTIN THE DISTRICT  
COURT OF DENTON  
COUNTY, TEXAS

v.

M. WILEY  
CATLETT, ET AL158th JUDICIAL  
DISTRICTINTERLOCUTORY ORDER

On the 28th day of September, 1982,  
CAME on to be heard FLORENCE IONA CATLETT,  
Plaintiff's Motion for Reimbursement and  
for Designation of Property To Be Set Aside.  
Plaintiff appeared by attorney of record and  
in person and announced ready. Defendant,  
M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE  
OF ERNEST LUTHER CATLETT, appeared by attorney  
and in person and announced ready. Defendant,  
R. DAVID BROILES appeared in person  
and by attorney and announced ready. After  
hearing evidence and argument of counsel, the  
Court is of the opinion and finds that:

1. Pursuant to the terms of a Judgment  
rendered in Cause Number 236-39718-76, styled

M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE





OF ERNEST LUTHER CATLETT, DECEASED v. FLORENCE IONA CATLETT, EXECUTRIX OF THE ESTATE OF PHARON C. CATLETT, DECEASED, ET AL., in District Court of Tarrant County, Texas, 236th Judicial District, Defendant, M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, became obligated to pay one-sixth (1/6th) of all ad valorem taxes levied and assessed against the property the subject of this partition suit.

2. Plaintiff, FLORENCE IONA CATLETT, has paid the ad valorem taxes assessed against the property since August 26, 1974, in the amount of Four Thousand Ninety-Five and 73/100 Dollars (\$4,095.73), which ad valorem taxes were assessed by the tax assessor and collector of Denton County, Texas, for the payment of Texas State taxes and Denton County, Texas, taxes and by the tax collector and assessor for the Aubrey Independent School District.

3. The Court finds that Defendant, M. WILEY CATLETT, should be ordered to reimburse



Plaintiff, FLORENCE IONA CATLETT, for one-sixth (1/6) of said taxes being the sum of Six-Hundred Eighty-TWO and 62/100 Dollars (\$682.62).

4. The Court finds that pursuant to the terms of the Judgment rendered in Cause No. 236-39718-76 in the 236th District Court, there is a valid outstanding deed of trust lien against one certain eighty (80) acre tract which is more fully described as follows:

All that real property located in Denton County, Texas, owned by Florence I. Catlett and being more particularly described as follows:

FIRST TRACT: All of the following described real estate situated in Denton County, Texas, about 1/2 mile West of the town of Aubrey, Texas, containing 77.93 acres, more or less, and consisting of the following surveys and parts of surveys, to-wit:

BEING 80 acres of land out of the DENNIS COWAN Survey:

BEGINNING at the Northwest corner of said Cowan Survey, same being also the Southwest corner of the J. M. Fischer Survey;  
THENCE East 713-1/2 varas, stake for corner;  
THENCE South 633 varas corner;



THENCE West 713-1/2 varas corner, the West Boundary Line of said Cowan Survey;  
THENCE North 633 varas to the place of beginning containing 80 acres of land, described in Deed of record in Volume 67, Page 172, Deed Records, Denton County, Texas.

## SAVE AND EXCEPT:

BEING a tract of land lying partially in the John Jordan Survey, Abstract No. 678, and the Dennis Cowan Survey, Abstract No. 304, owned by C. E. Catlett;  
BEGINNING at the Northwest corner of the above said tract, said corner being survey station 543 plus 47;  
THENCE South along the West Boundary line of said tract to a point 50 feet opposite and at right angles to the center line of said Highway;  
THENCE North 89 degrees 41 minutes East along a line 50 feet distant from and parallel to the center line of said Highway to a point 50 feet opposite and at right angles to survey station 554 plus 50;  
THENCE in an Easterly direction along a line 50 feet distant from and parallel to a 1 deg. curve to the right to a point 50 feet opposite and at right angles to survey station 555 plus 50;  
THENCE South 88 degrees 19 minutes East along a line 50 feet distant from and parallel to the location line of said Highway to a point in the East Boundary line of said tract;  
THENCE North along the East boundary line of said tract to its Northeast corner, said corner being 10 feet South, more or less, from survey station 562 plus 25;  
THENCE North 88 degrees 19 minutes West along the North boundary line of said tract to survey station 555 plus 00;  
THENCE South 89 degrees 41 minutes West along the North boundary line of said tract to the



point of beginning and containing 2.07 acres, more or less, 1.24 acres being within the limits of the present right-of way as shown by right-of way map on file with the State Highway Engineer and another on file with the County Clerk of Denton County, Texas, and bearing date of January, 1931.

said deed of trust lien is for the benefit of the Federal Land Bank of Houston, Texas. Said deed of trust is recorded in Volume 398, page 483, Deed of Trust Records, Denton County, Texas. The obligation secured by said deed of trust is the sole obligation of Plaintiff, FLORENCE IONA CATLETT. The Court finds that it is in the best interest of all the parties that a partitioning of the real property the subject of this suit that the commissioners previously appointed by this Court should be instructed that to the extent possible they should attempt in the partition of the real property the subject of this partition action to set aside said eighty (80) acre tract for the use and benefit of FLORENCE IONA CATLETT.

5. The Court further finds that in making this partition and in attempting to





the extent possible in making a fair and equitable partition between the parties of setting aside the eighty (80) acre tract for FLORENCE IONA CATLETT, the commissioners are not to take into consideration the fact that said eighty (80) acre tract is subject to the lien held by the Federal Land Bank pursuant to the above referenced deed of trust.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that:

1. Plaintiff, FLORENCE IONA CATLETT, be awarded Judgment in the sum of Six Hundred Eighty-Two and 62/100 Dollars (\$682.62) from M. WILEY CATLETT, ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED, said sum to be paid in the due course of administration.

2. The commissioners previously appointed by this Court are instructed that to the extent possible in making a fair and equitable partition of the property they should attempt to set aside the eighty (80) acre



tract of land previously described herein  
for the sole use of FLORENCE IONA CATLETT,  
Plaintiff.

SIGNED this the 14th day of October, 1982.

/s/ JOHN NARSUTIS

Presiding Judge, John Narsutis

CERTIFIED A TRUE COPY, Gladys Whitten,  
District Clerk, Denton County, Texas  
By Vera Hughes, Deputy

(NOTE: The May 18, 1983 OPINION of the  
Second Supreme Judicial District Court of  
Appeals, Fort Worth, Texas, No. 2-82-212-CV  
(No. 81-8158-B below) , shoots down "FLO'S"  
three partition Judgments of Judge Narsutis'  
signed by the Judge on October 4 - 14 - 14,  
1982 , same OPINION reversed and remanded  
the cause. Also saying, "It is further  
ordered that appellee, FLORENCE IONA CATLETT,  
pay all costs of this appeal, for which let  
execution issue . . . " Hence, the alleged  
survey of the "Aubrey, Texas Farm" which  
failed to "honor" the descriptions outlined  
in Judge Narsutis' October 4th, 1982 judgment,  
went down with this O P I N I O N of May 18,  
1983 of the Fort Worth, Texas Appellate Court.  
M. Wiley Catlett, Individually, was not a party  
in "Flo's" partition action and therefore is  
not bound by it- "Wiley" was never served by  
FLORENCE IONA CATLETT .

The bank named in "Flo's" partition  
action , The Federal Land Bank of Houston,  
has not existed since, about 1979 and "Flo's"  
attorney "Lively" prepared that "Interlocutory  
Order" for Judge Narsutis to sign. Said  
partition is not fair and equitable to all  
parties.



NUMBER 77-2726

THE ESTATE OF ERNEST      IN THE COUNTY PROBATE  
LUTHER CATLETT,              NO. 1, TARRANT COUNTY,  
DECEASED                      TEXAS

O R D E R

On the 25th day of January (?), 1982, came on to be heard FLORENCE IONA CATLETT'S motion seeking the removal of M. WILEY CATLETT as administrator of the Estate of ERNEST LUTHER CATLETT and of the appointment of a Successor administrator. FLORENCE IONA CATLETT, movant, appeared in person and by attorney of record and announced ready for trial, and M. WILEY CATLETT, Administrator of the Estate of ERNEST LUTHER CATLETT appeared in person and by attorney of record and announced ready for trial and a jury trial having been waived (?), all matters in controversy were submitted to the court.

The Court, after hearing the evidence and arguments of counsel is of the opinion that



M. WILEY CATLETT has been guilty of mismanagement in the performance of his duties as administrator of the Estate of ERNEST LUTHER CATLETT and necessity for the immediate appointment of a successor administrator exists.

It is therefore ORDERED, ADJUDGED AND DECREED that based upon the findings found set forth hereinabove, that M. WILEY CATLETT be and is hereby removed as administrator of the Estate of ERNEST LUTHER CATLETT, Deceased. It is further ordered that Letter of Administration hereto fore issued to the said M. WILEY CATLETT be immediately returned to the Clerk of this Court and that all letters of Administration be immediately cancelled of record whether delivered or not.

It is further ORDERED, ADJUDGED AND DECREED that Sarraine Krause, a person who is qualified and not disqualified by law be appointed administrator of the Estate of ERNEST LUTHER





CATLETT, Deceased, and that Letters of Administration be issued to Sarraine Krause, upon filing of good and sufficient bond in the sum of \$2,000.00, conditioned as required by law and taking the oath of office and filing same within twenty (20) days from this date.

It is further ordered that M. WILEY CATLETT shall deliver all of the property both real and personal, tangible and intangible, belonging to the Estate of ERNEST LUTHER CATLETT, Deceased to Sarraine Krause successor administrator, at 1245 SouthRidge Ct., Suite 203, Hurst, Tx. at 10:00 A.M. on the 10th day of June, 1983, and on or before the 11th day of July, 1983, that M. WILEY CATLETT make and file a Final Accounting of the Estate of ERNEST LUTHER CATLETT, Deceased in the manner prescribed by law.

Signed this the 10th day of May, 1983.

/s/ Robert M. Burnett  
JUDGE PRESIDING



Approved as to form:

LAW OFFICES OF JOHN R. LIVELY  
1130 Fort Worth Club Tower  
Fort Worth, Texas 76102  
(817) 338-1616

/s/ A. Bruce Wilson

A. Bruce Wilson  
Attorney for Movant  
State Bar ID# 21666500

WHITTEN & LOVELESS, P. C.  
202 Texas Building  
Denton, Texas 76201  
(817) 383-1618

/s/ William L. Smith, Jr.

William L. Smith, Jr.  
Attorney for Administrator  
State Bar ID# 18760000



COURT OF APPEALS

Second Supreme Judicial District

Forth Worth, Texas, May 18, 1983.

William L. Smith, Jr. 202-216 Texas  
Building, Denton, Tx. 76201 - 267-2881

Dear Sir:

The Judgment of the Trial Court  
in case of M. WILEY CATLETT, Admin. of Estate  
of Ernest Luther Catlett, Deceased v. Florence  
Iona Catlett No. 2-82-212-CV from Denton  
County, was reversed and remanded today.  
Copies of the opinion and judgment of the  
Court are hereto attached.

Yours truly,

Yvonne Palmer, Clerk

JUDGMENT

M. WILEY CATLETT, Admin. of	From the 158th
Estate of Ernest Luther	District Court
Catlett, Deceased	Denton County
	(81-8158-B)
No. 2-82-212-CV	vs.
	May 18, 1983
Florence Iona Catlett	Opinion by Justice
	Burdock (NFP)

This case came on to be heard on the



transcript of the record and the same having been reviewed, it is the opinion of the Court that there was error in the judgment. It is therefore ordered, adjudged and decreed that the judgment of the trial court is reversed and the cause remanded.

It is further ordered that appellee, Florence Iona Catlett, pay all costs of this appeal, for which let execution issue, and that this decision be certified below for observance.

-----  
No. 2-82-212-CV

IN THE COURT OF APPEALS FOR THE

SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

M. WILEY CATLETT, Admin. of  
Estate of Ernest Luther Catlett,  
Deceased

APPELLANT

vs.

FLORENCE IONA CATLETT

APPELLEE

FROM THE 158th DISTRICT COURT OF DENTON CO.  
-----

OPINION  
-----

Appeal is taken from an order imposing





sanctions and granting a default judgment in favor of appellee, Florence Iona Catlett.

We reverse and remand.

Originally, appellee, Florence Iona Catlett, R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles sued appellant, M. Wiley Catlett, a resident of Highland Park, Illinois and administrator for the estate of Ernest Luther Catlett, Deceased for partition of real property located in Denton County, Texas. R. David Broiles and the firm of Brown, Herman, Scott, Dean & Miles have since been severed from the main cause of action in the trial court and are not involved in this appeal.

Appellant was noticed on July 26, 1982 to appear for depositions on August 20, 1982. In response, appellant filed a motion for protective orders. At a hearing on the motion, on August 19, 1982, appellant, represented by counsel, was ordered to appear August 31, 1982 for an in camera inspection



of documents alleged to be privileged add to make himself available for deposition following the in camera inspection. At the August 31, 1982 hearing , appellant's attorney appeared without appellant and failed to produce the documents previously ordered for the in camera inspection. Appellant also failed to appear for the deposition scheduled that day.

On August 31, 1982, the trial court found appellant violated the previous discovery orders and further ordered that appellant appear for deposition at appellant's attorney's office on September 2, 1982. This order was signed September 1, 1982. Appellant failed to show for the September 2nd deposition. At this time Appellant still resided in the State of Illinois.

On September 3, 1982, appellee filed his first motion for sanctions for appellant's failure to appear and make discovery as ordered by the court.



APPELLANT asserts five points of error. The first point of error alleges that the trial court abused its discretion in granting a default judgment against appellant.

Undoubtedly, the trial court has the authority to strike pleadings pursuant to TEX. R. CIV. P. 167, 170, 215(a)(c); Waguespack v. Halipoto, 633 S.W.2d 628 (Tex.Civ. App.-- Houston (14th Dist.1982), writ ref'd n.r.e.) This authority, even though broad, is subject to abuse of discretion. Fisher v. Continental Illinois National Bank and Trust Company of Chicago 424 S.W.2d 664 (Tex. Civ.App.-- Houston(14th Dist.)1968 writ ref'd n.r.e.). The standard of review is whether the trial court's decision was arbitrary or unreasonable. Landry v. Travelers Insurance Company, 458 S.W.2d 649 (Tex. 1970); Waguespack v. Halipoto, supra.



After reviewing the record and the time frame in which the above events occurred, appellant was essentially precluded from complying with the court order. In the interest of justice, the trial court should have given appellant a reasonable amount of time, after notice, in which to comply with the order. Plodzik v. Owens-Corning Fiberglass Corp. 549 S.W.2d 52 (Tex.Civ.App. -- Austin 1977, no writ).

We find that the trial court was arbitrary and unreasonable in striking appellant's answer and granting a default judgment for failure to comply with the discovery orders and that appellant should have been given a reasonable amount of time in order to make arrangements to appear in the scheduled depositions.

Due to our disposition of this case, appellant's other points of error need not be addressed.





The judgment of the trial court is reversed and the cause is remanded.

WILLIAM E. BURDOCK  
JUSTICE

PANEL B

FENDER, C.J.: BURDOCK AND SPURLOCK II, JJ.  
TEX. R. CIV. P., R. 452

MAY 18, 1983

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(NOTE: Cause No. 81-8158-B, Denton County, Texas is "Flo's" partition action which was filed on December 3, 1981 by her attorney "Lively" and it contains as her Ex. "A" containing the incorrect and insufficient legal description of the land, "Judgment" (Agreed) No. 236-39718-76, Tarrant County, Texas, Petitioner's Ex. "D" and "F" respectively in his complaint, F.R.C.P. Rule 10(c). The facts regarding the insufficient description are shown in:

See PEx. "1" thru "6" of Ex. "J" in Petitioner's Complaint, pages C of A p. 4, 5, 18, 19 thereof. See also p.2, par. 2 of "Lively's" Dec. 16, 1980 letter to R. David Broiles, attorney where "Lively" said: "I have talked to Mr. Trickey (attorney for bank) regarding the discrepancy in acreage, and we are unable to explain it in terms of conveyances." The above appeal resulted from three (3) Judge Narsutis Judgments signed on October 4 - 14 - 14, 1982 which sought to partition the land which all were reversed and remanded on May 18, 1983

Hence, no legal partition of the farm has been made to date. )



WHITTEN & LOVELESS  
Attorneys at Law P. C.  
Suite 202-216 Texas Building  
Denton, Texas 76201

May 24, 1983

Clerk  
Probate Court No. 1  
Tarrant County Courthouse  
Ft. Worth, Texas 76102

RE: No. 77-2826; The Estate of Ernest  
Luther Catlett, Deceased

Dear Clerk:

I represent M. Wiley Catlett, an interested person in the above referenced estate.

Please forward notice of any proceedings had in the above referenced cause to this office.

Your assistance is deeply appreciated.

Sincerely,

/s/ Bill Smith

William L. Smith, Jr.

WLS:tf

cc: M. Wiley Catlett

(Note: These letters from attorney William L. Smith, Jr. are Plaintiff's-Petitioner's Exhibits "G" in his Complaint, F.R.C.P. R,10 (c)



WHITTEN & LOVELESS  
Attorneys at Law P. C.  
Suite 202-216 Texas Building  
Denton, Texas 76201

May 24, 1983

Ms. Sarraine Krause  
1245 Southridge Court,  
Suite 203  
Hurst, Texas 76053

RE: No. 77-2726; The Estate of  
Ernest Luther Catlett,  
Deceased

Dear Ms. Krause:

I represent M. Wiley Catlett, an interested person in the above referenced estate. Please provide this office with notice and an opportunity to be heard regarding all actions taken by you on behalf of said estate.

I am forwarding a copy of this letter to the Clerk of the Probate Court and request that it be made a part of the Court's file.

Sincerely,

/s/ Bill Smith

William L. Smith, Jr.

WLS:tf

cc: M. Wiley Catlett

Clerk, Probate Court



C I V I L D O C K E T

No. 236-39718-76 M. Wiley Catlett, et al  
-213-

vs.

Florence Iona Catlett, et  
al

ATTORNEYS: Brown, Crowley,etal (Nelson)  
Michael R. Burkett

Brown, Herman(Broiles)Ptf.

vs.

ATTORNEYS: Walker, Bishop (John Lively)

FOR: Florence Iona Catlett, et al

For: Federal Land Bank:(Richard Trickey)

Suit to set aside Deed

DATE OF FILING: September 1, 1976

Jury Fee - \$ 5.00

Paid By Plaintiff - December 7, 1979

Date of Orders - \$28.00 ORDERS OF COURT

4-1-77 -- Transferred to 236th District  
Court per order recorded in  
Book PY and Page 561 "Tom Cave"

10-28-77 - Suggestion of De - Alw, Jr.

11- 4-77 - Granted Motion for Protection -  
Alw. Jr.





CIVIL DOCKET

- 11-14-77 - Order to quash Depo - Alw Jr.
- 1- 5-78 - Order to produce granted  
- on or before 2-15-78 -Alw Jr.
- 12- 4-79 - Order substituting counsel  
- signed . . ALWJr.
- 11-17-80 - Trial begins - 11-17-80 --  
11-20-80 - (Cont'd)
- 11-20-80 - Case Settled -- 2:30 P.M.-Alw Jr.
- 8-27-81 - Hearing on Motion for Judgment -  
4-28-80 ; 8-25-80 ; 10-14-80 ;  
11-17-80
- 9-15-81 - Judgment signed . . . Alw Jr.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT,  
Plaintiff,

CIVIL ACTION

v.

No. S-87-83-CA

JOHN R. LIVELY, et al,  
Defendants

PLAINTIFF'S EXHIBIT " J "

CITATION OF AUTHORITY IN SUPPORT OF THE POSITION: THAT UNDER CHARLIE CATLETT'S WILL OR UNDER THE LAW OF DESCENT and DISTRIBUTION ERNEST LUTHER CATLETT, sole survivor, will inherit everything: that is the whole, 100%, AUBREY TEXAS FARM of James L. Catlett and wife, Elizabeth A. Further, THAT the "Chain of Title" of said farm and estates vested in ERNEST LUTHER CATLETT

---

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COMES, M. WILEY CATLETT, sole heir of ERNEST LUTHER CATLETT, his father, and Plaintiff herein and files the following:

1. Citation of Authority in support of the position: that under Charlie Catlett's will, Exhibit "A" in this Cause, or under the law of descent and distribution that Ernest Luther Catlett, sole survivor of James L. Catlett and wife, Elizabeth A. Catlett, his



father and mother, inherited the whole, 100%, 6/6th's, of the AUBREY, TEXAS FARM formerly owned by his father and mother.

2. (a) - Charlie Catlett, Testator, died  
August 26, 1974
- (b) - Pharon C. Catlett, died September  
19, 1975
- (c) - Ernest Luther Catlett, died June  
1, 1977

Ernest Luther Catlett was the sole surviving son; Pharon Crawford Catlett having predeceased Ernest Luther Catlett.

3. The SECOND provision of Charlie's will, Plaintiff's Exhibit "A" herein contains just two (2) sentences and likewise two (2) paragraphs. The first sentence is ten (10) lines long and the second sentence is six (6) lines long.

4. The first sentence (ten lines in length) of that SECOND provision reads:

" SECOND: I give and bequeath to my brother, ERNEST LUTHER CATLETT, for and during his natural life all of my property, real,



personal and mixed, he the said ERNEST LUTHER CATLETT to have the use and benefit of all of my lands, particularly those located in Denton County, Texas, to have the installment payments of principal on the Vendor's Lien Note due from R. E. CLARK, JR., together with interest thereon as it accrues during his natural life, and as his death all of said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in the County of Tarrant, Texas. "

5. In FROST NAT. BANK of San Antonio v. NEWTON, Tex.Sup.Ct., 1977, 554 S.W.2d 149 on p. 153 stated: "(2) . . . Therefore, the true meaning of the will must be determined by construing the language used within the four corners of the instrument. "REPUBLIC NATIONAL BANK of DALLAS v. FREDERICKS, Tex. Sup. Ct., 1955, 283 S.W.2d 39, 49, 155 Tex. 79. No speculation or conjecture regarding the intent of the testatrix is permissible





where, as here, the will is unambiguous, and we must construe the will based on the express language used therein. HUFFMAN v. HUFFMAN, 161 Tex. 267, 339 S.W.2d 885 (1960)." .

6. In ADAMS v. MASTERSON, Tex.Civ.App., Dallas, 1967, 415 S.W.2d 535, RNRE, see p. 536 where the court said: "(1-3) . . . The will and codicil are unambiguous . . . it is our view that rules of construction may not be employed by the courts to make a disposition which is not included in the testor's will for "this would amount to ascertaining the testator's intention from what he failed to say rather from what he did say." 61 Tex. Jur.2d. Wills, Sect. 129, p. 251; Arwood v. Kleberg (5th Cir.) , 163 F2d 108, 114, cert. den. 332 US 843, 68 S.Ct. 267, 92 L.Ed. 414; Dailey v. Dailey, 224 Ill.App. 17, cer. den."

7. First, Charlie's will in that first sentence (ten (10) lines in length) of the SECOND



provision made the survival of the remainder-man, Pharon Crawford Catlett, who now lives in the County of Tarrant, Texas, a condition precedent to the vesting of the remainder. Pharon Crawford Catlett must survive the first-taker, Ernest Luther Catlett. A fact which he did not do.

8. The conditional element is incorporated into the description of, or into the gift to the remainder-man. Therefore, Pharon's remainder was contingent. Contingent upon Pharon surviving Ernest.

9. The Supreme Court of Texas in *GUILLIAMS v. KOONSMAN*, 1955, 279 S.W.2d 579, see p. 582 where they said: "The rule for determining whether a remainder is vested or contingent is thus stated by Gray in his work on The Rule Against Perpetutities: "If the conditional element is incorporated into the description of, or into the gift to the remainder-



man, then the remainder is contingent; but if, after words giving a vesting interest, a clause is added divesting it, the remainder is vested." 3rd Ed., sect. 108(3), page 85, see also *In Re: Roe's*, 281 N.Y. 541, 24 N.E. 2d 322, 131 A.L.R. 712, et seq. The rule as thus stated has been approved and adopted by the courts of this state. *Jones v. Hext*, Tex. Civ.App. 67 S.W.2d 441, 444, writ refused; *Rust v. Rust*, Tex.Civ.App. 211 S.W.2d 262, 266, opinion approved, 147 Tex. 181, 214 S.W. 2d 462.

10. In Charlie's will, it is clear that the gift to the remainder-man, Pharon, in that first sentence (ten(10) lines in length) has the conditional element incorporated into that description of, or into the gift itself to the remainder-man, Pharon. Hence, the remainder is contingent. It is all in just one long sentence.

11. As further stated in *GUILLIAMS v. KOONS-*



MAN, 1955, 279 S.W.2d 579, The Texas Supreme Court, page 582 said: " . . . when the will makes survival a condition precedent to vesting of the remainder, it must be held contingent. In 36 Tex.Jur., Remainders and Reversions, section 7, p. 877 . . . "

12. The conclusion that the remainder to Pharon is contingent is impelled by those words: " . . . and at his death (Ernest Luther Catlett's death) all of said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in County of Tarrant, Texas." (Emphasis added). Charlie's will in that first sentence (ten (10) lines in length) of the SECOND provision made survival of the remainder-man (Pharon) a condition precedent to the vesting of the remainder. Pharon predeceased Ernest. Pharon was not alive at the time of his death (Ernest's) the time when all of said lands and other property " shall vest " in Pharon.

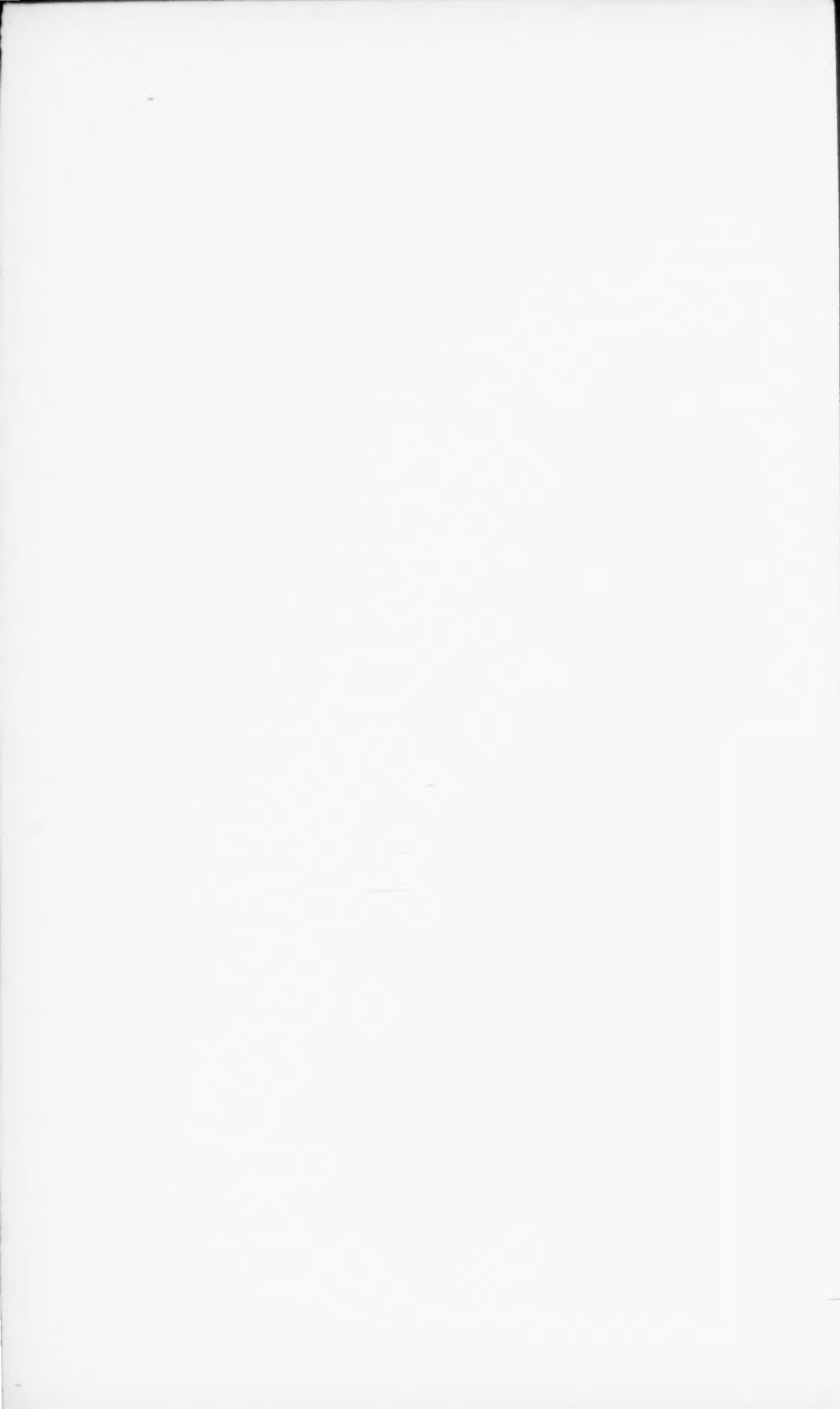




13. There is no "but if " in that first sentence (ten (10) lines in length) of the SECOND provision. Also there is no clause added divesting it after words giving a vesting interest as stated in Gray's work on the Rule Against Perpetuities. However, a conditional element is incorporated into the description of, or into the gift to the remainder-man, then the remainder is contingent; . . . " (Emphasis Added)

14. Second, consider the second sentence of the SEDOND provision of Charlie's will, Exhibit "A" hereto, which second sentence (six lines in length) reads as follows:

" It is my intention to provide a reasonable income for my brother, ERNEST LUTHER CATLETT, during his lifetime, and at his death for all of the rest, residue and remainder of my property, of whatever kind, sort, classification or category, which shall remain upon his death to be inherited in fee

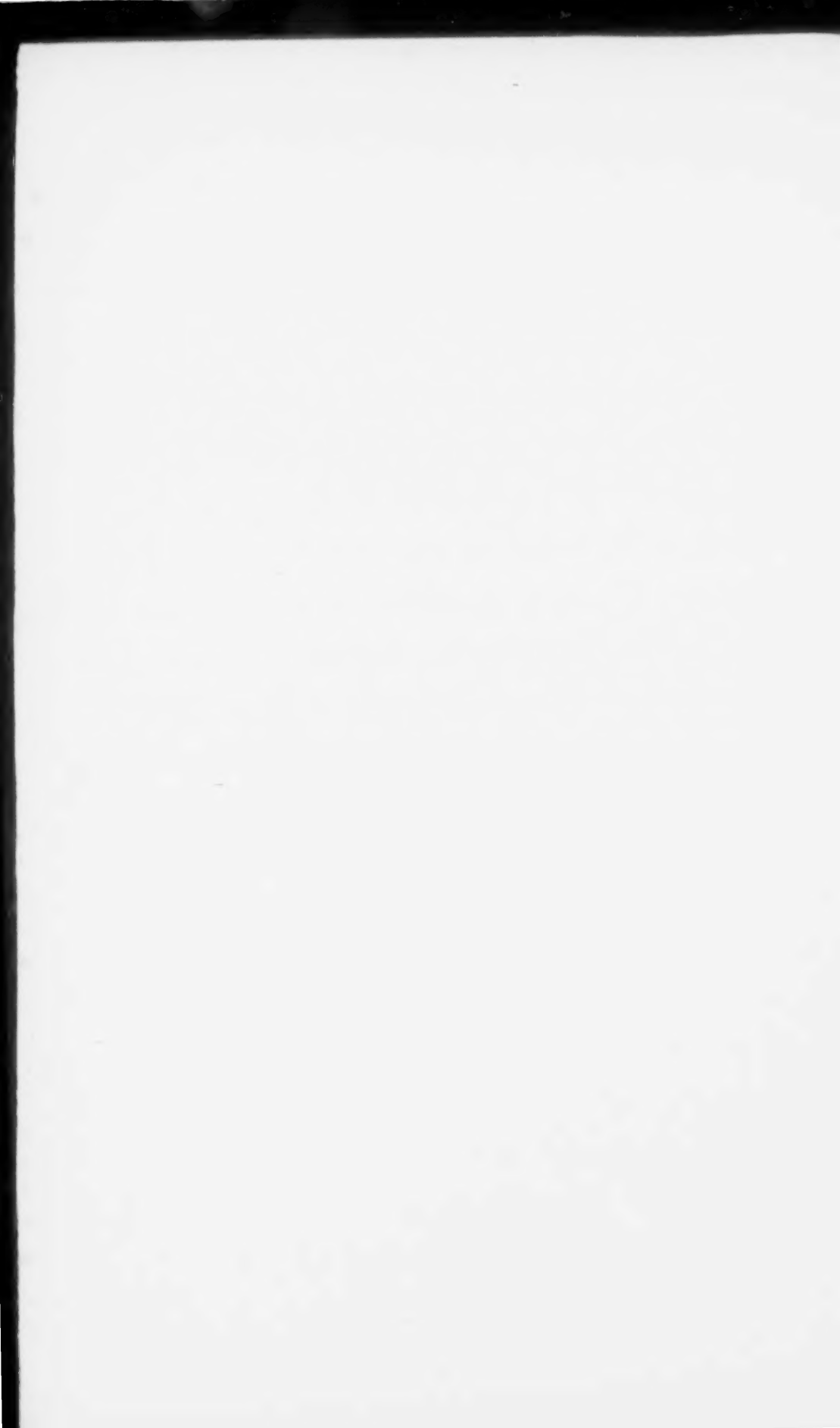


simple by my brother, PHARON CRAWFORD CATLETT. "

15. It is Plaintiff's, herein, position that the language of this second sentence of that SECOND provision quoted is crucial to a determination of the intent of the testator.

16. Plaintiff concedes that the law favors a construction that a remainder is vested rather than contingent. Nevertheless, rules of construction are subordinate to the intent of the testator as gathered from the will as a whole, and "if there by any words in the will that indicate, though slightly, that it was not the intention of the testator to vest the estate, they will be given that effect."

COKER v. ECKERT, 369 S.W.2d 473 (Tex.Civ.App. - Fort Worth 1963, writ ref.n.r.e.) (Emphasis added). The rule favoring early vesting of estates does not apply where there are other indicia of intent expressed. WILKES v. WILKES, 488 S.W.2d 398 at p. 401 (Tex. 1972).



17. The language of intent in the will of Charlie Catlett, Exhibit "A" herein, is that Pharon would inherit at the time of Ernest's death that " which shall remain upon his death . . . " This language presupposes that the property devised to Ernest would undergo diminution during the pendency of his estate and implies in Ernest a power to encroach upon, dispose of and consume the property of the estate. MURPHY v. SLATON, (Tex. 1954) 154 Tex.35, 273 S.W.2d 588, pp 595 & 596. Resultingly, Pharon is relegated to the status of a contingent remainder-man whose rights are limited to any property undisposed of at the time of Ernest's death. DICKERSON v. KELLER, 521 S.W.2d 288 (Tex.Civ. App. -Texarkana, writ ref.n.r.e.) see p 292, (2) & (3,5).

18. If time is annexed to the substance of a gift as a condition precedent, then the gift is contingent, and it is the uncertainty of a right to future enjoyment that distinguishes



a vested from a contingent remainder. JONES v. HEXT. 67 S.W.2d 441 (Tex.Civ.App. - Amarillo 1934, writ ref.). In relation to the will of Charlie Catlett, the uncertainty as to future enjoyment lay in the uncertainty as to what would remain in the estate at the termination of Ernest's interest. The express provisions that Pharon's estate would vest at the time of Ernest's death, and that Pharon would inherit "that which shall remain" at the time of Ernest's death, express a clear intent that Pharon receive a contingent remainder, contingent upon Pharon's surviving Ernest and upon what property, if any, remained in the estate at the time of Ernest's death.

19. Charlie Catlett was never married and never had any children. Ernest Luther Catlett was the sole survivor; hence Ernest under the law of descent and distribution would inherit everything. In Re: GATES' ESTATE, Supreme Court said: "His death, which occurred before that of one life tenant, divested his estate."





WALTER L. GEYER, M. D.  
2061 Highway 183 N. W.  
Ft. Worth, Texas 76104

- - - - -  
Telephone 626-8268

July 26, 1976

TO WHOM IT MAY CONCERN:

RE: ERNEST LUTHER CATLETT

This is to certify that I have been treating Mr. Ernest Luther Catlett for the last three years. Mr. Catlett is 87 years old and has been a Nursing Home Patient during this time. Mr. Catlett's health has been poor and he suffers from hardening of the arteries. He has what is known as a chronic brain syndrome. This means that his mind does not function properly, he is mentally incompetent and certainly is in no condition to make judgments or decisions in business matters.

Mr. Catlett cannot remember events from one visit to my office to the next. He has no recollection of previous treatments that I have



given him, particularly those of a surgical nature. Again I would say he could not and should not make a business judgment. He is easily influenced and obeys instructions readily. He would if requested, sign any type of document.

Sincerely yours,

/s/ Walter L. Geyer

Walter L. Geyer, M. D.



F I L E D  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
AUG. 21, 1989  
MURRAY L. HARRIS, CLERK  
Beverly Hudgens, Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

M. WILEY CATLETT,  
Plaintiff,

CIVIL ACTION

vs.

No. S-87-83-CA

JOHN R. LIVELY,  
et al, Defendants

PLAINTIFF'S MOTION to COMPEL ANSWERS  
from DEFENDANT, FLORENCE IONA CATLETT, et al  
Under Rules: 37(a), 37(d), 33, and 26.

TO THE HONORABLE JUDGE PAUL BROWN:

PLAINTIFF, M. WILEY CATLETT, sole heir  
of Ernest Luther Catlett, moves the Court,  
pursuant to The Federal Rules of Civil Pro-  
cedure, Rules: 37(a) and 37(d) and 33 and  
26, for an order to compel defendant, FLO-  
RENCE IONA CATLETT, Individually, and as  
Independent Executrix of The Estate of P. C.

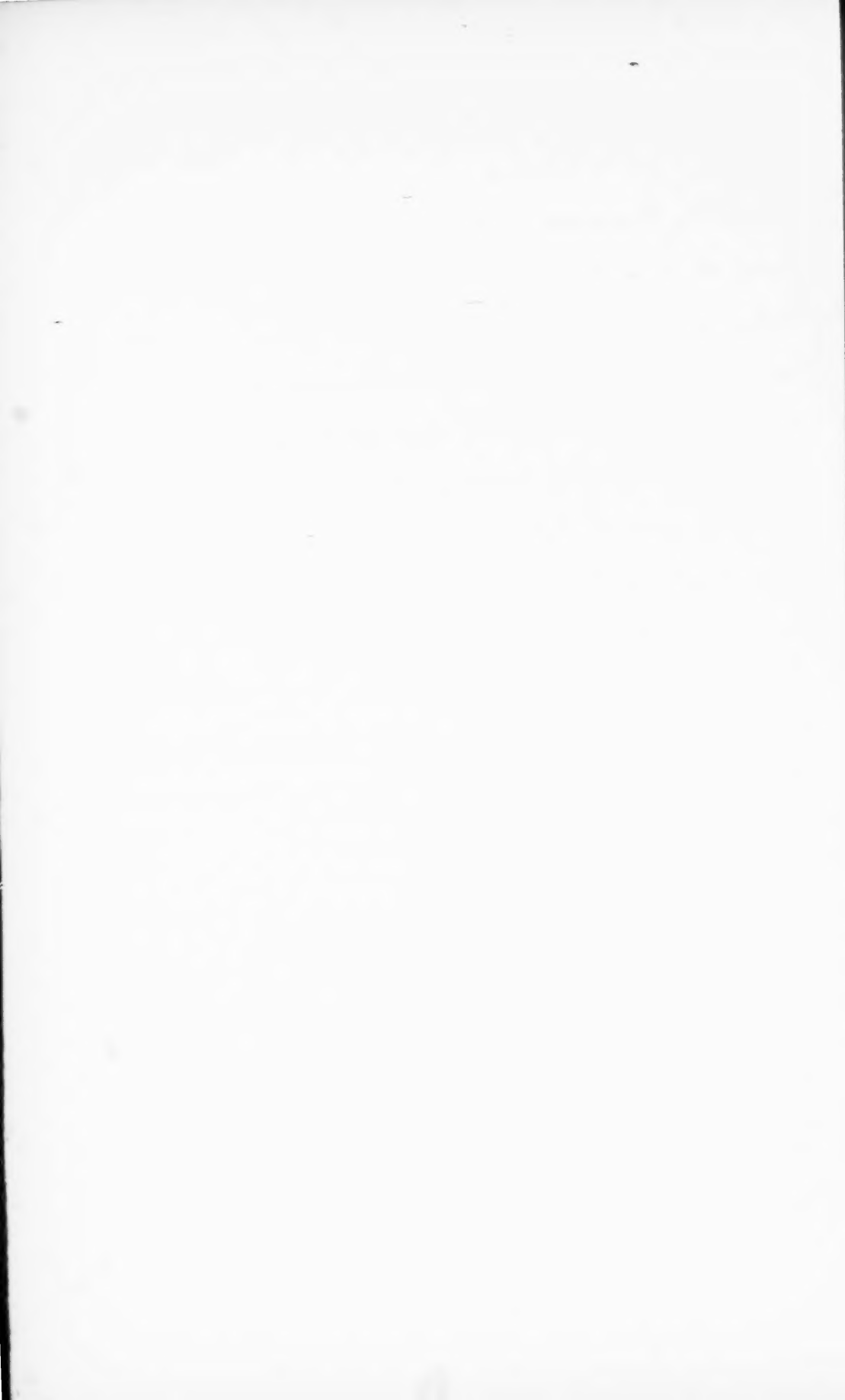


Catlett, Deceased, and as Administrix with with Will Annexed to The Estate of Charlie Catlett, Deceased (hereinafter "FLO") whose last know address is 702 N.W.24th Street, Fort Worth, Tx. 76106, and whose attorney of Record is John R. Lively who is also a defendant herein (hereinafter "LIVELY"), whose last known address is LIVELY & KASSELMAN, 1130 Fort Worth Club Tower, Fort Worth, Tx. 76102, both addresses being in Tarrant County, Texas, to produce answers to Interrogatories, "First Set", and for Sanctions and respectfully shows the Court as follows:

Plaintiff served "First Set"  
of Interrogatories on "FLO"

1. The Plaintiff herein, says that a true and correct copy of the "PLAINTIFF'S "First Set" of INTERROGATORIES to DEFENDANTS" was served upon defendants "FLO" under The federal Rules of Civil Procedure, Rule 33, by enclosing same in an envelope postpaid for first class handling which bore the senders name and return address

Page 1.



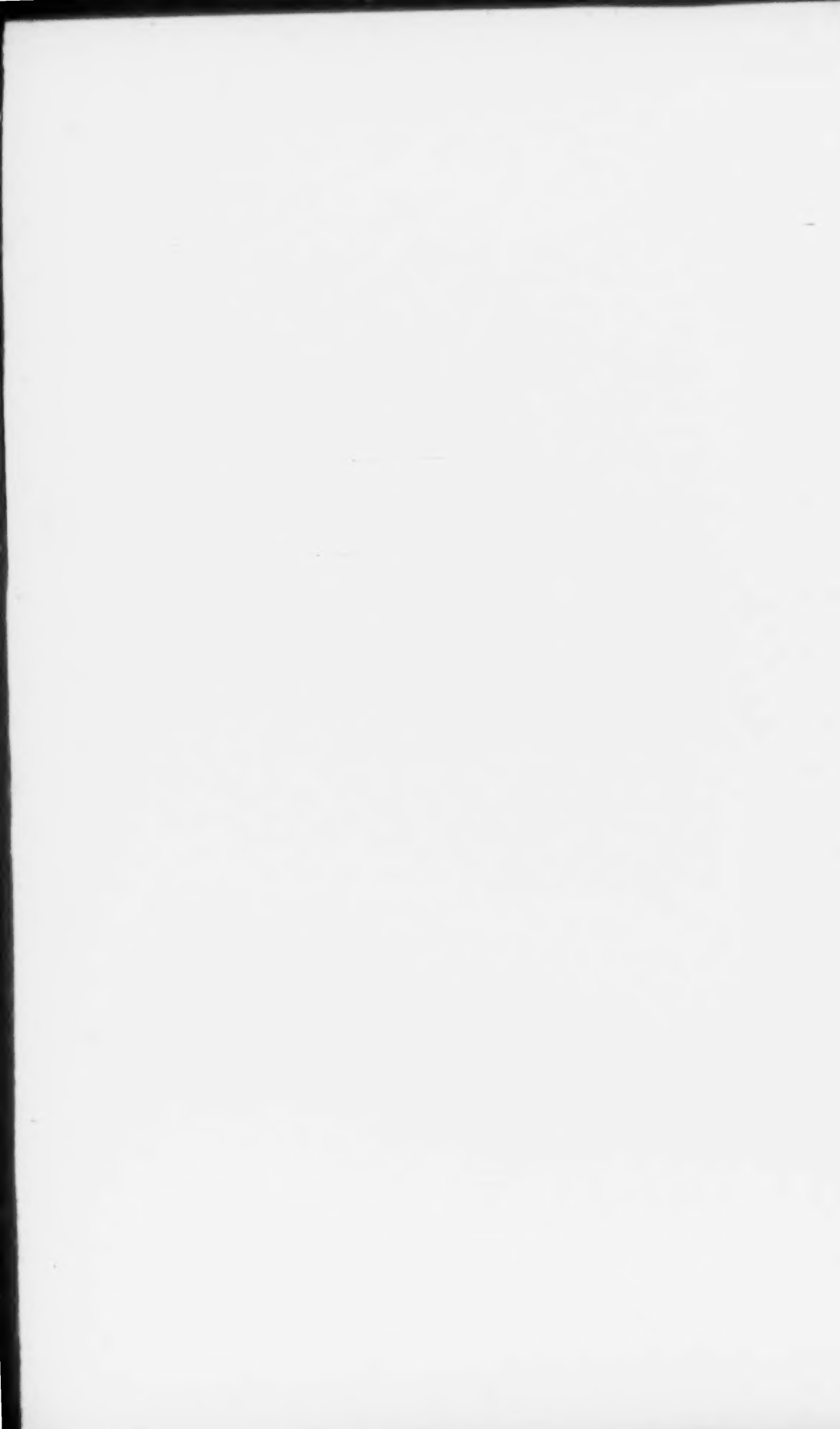


FEDERAL COMPLAINT - No. S-87-83-CA IN THE  
UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF TEXAS, SHERMAN DIVISIONList of ExhibitsExhibit  
NumberName of Exhibits

- "A" Charlie Catlett's Will signed -  
1-24-68 and Codicil signed 9-19-73  
P. 9 Item #26
- "B" Attorney John R. Lively's (2-page)  
Letter of 12-16-80 to attorney R.  
David Broiles  
p. 12, 15 Items #33, 37
- "C" CIVIL DOCKET SHEET (BOTH SIDES)  
No. 236-39718-76, 236th D.C.,  
Tarrant County, Tx."probative  
evidence"  
p. 14 Item #35
- "D" Florence Iona Catlett's PARTITION  
Petition of 12-3-81 in Denton County,  
Tx., No. 81-8158-B  
p. 14 Item #35
- "E" "Settlement-Agreement", dictated on  
11-20-80 in No. 236-39718-76, Tarrant  
County, Tx.  
p. 12, 15 Items #33, 35
- "F" AGREED or CONSENT JUDGMENT, No. 4,  
signed on 9-15-81, No.236-39718-76,  
Tarrant County, Tx. 236th D.C.  
p. 17,16,15,14,13 Itens #34,35,36,  
38,39,40



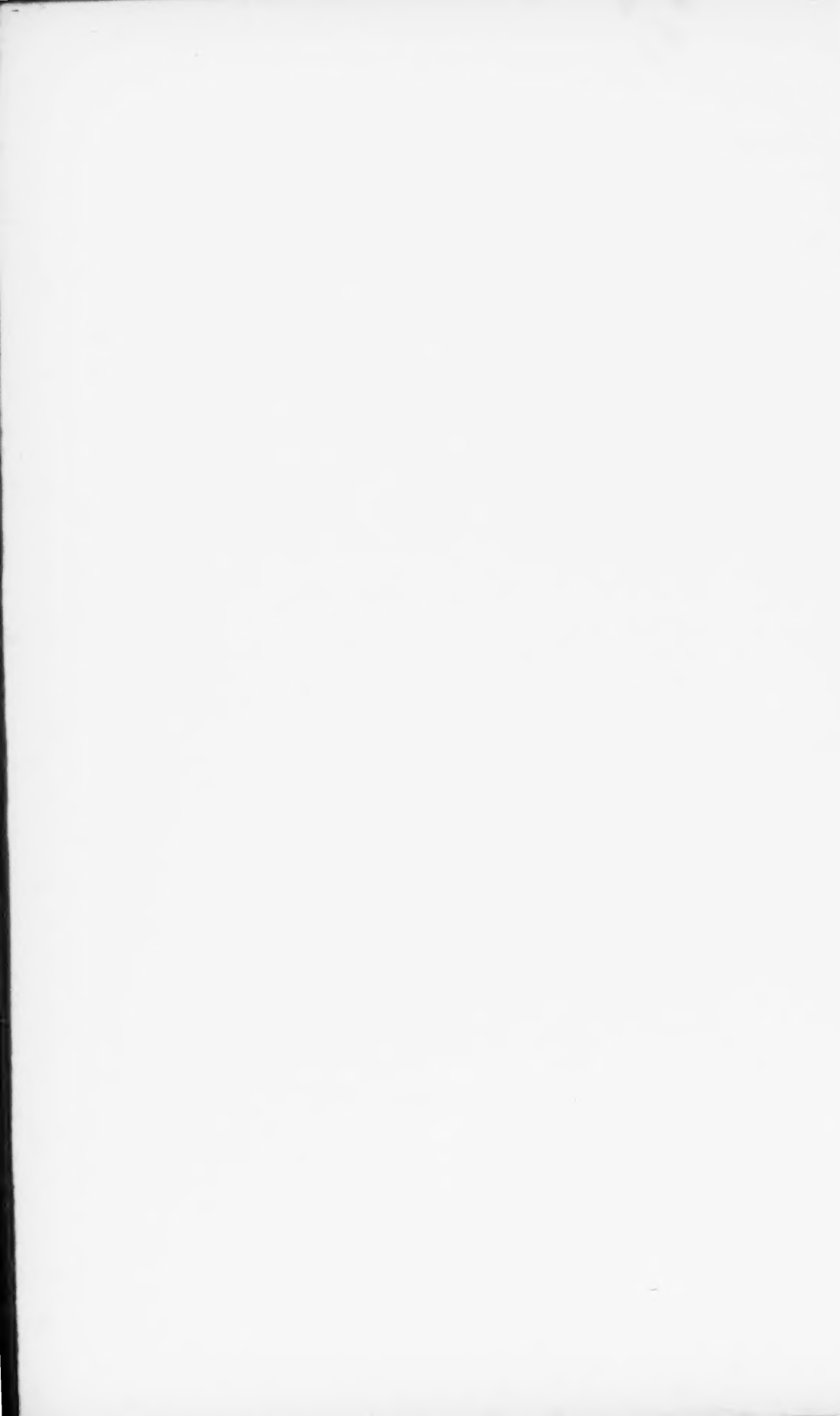
- "G" May 24, 1983 LETTERS from Attorney William L. Smith, Jr. of Denton, Tx. to the CLERK of Probate Court No. 1, Tarrant County, Tx., No. 77-2726 and another to Sarraine S. Krause, Successor Administratrix of the Estate of Ernest Luther Catlett, Dec'd. She is also an attorney.  
p. 24 Item #57
- "H" WARRANTY DEED #57214, vol. 1511, pp 17,18,19 & 20, Deed Records, Denton County, Tx., 10-19-84 from Johnny W. Richards, II as Successor Administrator of The Estate of Ernest Luther Catlett ? ? ? to the AUBREY GROUP composed of: Sharon L. Tolbert, David J. McGilvray and Joseph R. Kilianski (Grantee(s))  
p. 26,29,30 Items #60, 73
- "I" JOHN R. LIVELY (Claimant) 1-25-85  
Authenticated Claim in the amount of \$42,228.00 in Cause No. 77-2726, Tarrant County, Tx. In Re: The Estate of Ernest Luther Catlett, Dec'd.  
p. 27 Item #64
- "J" "Authority of the Chain of Title and Construction of Charlie Catlett's Will "  
p. 32 Item #78



FEDERAL COMPLAINT - NO. S 87-83-CA  
Filed: 4-16-87 IN THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF TEXAS,  
SHERMAN DIVISION:

List of Exhibits in Citation  
of Authority - Exhibit " J "

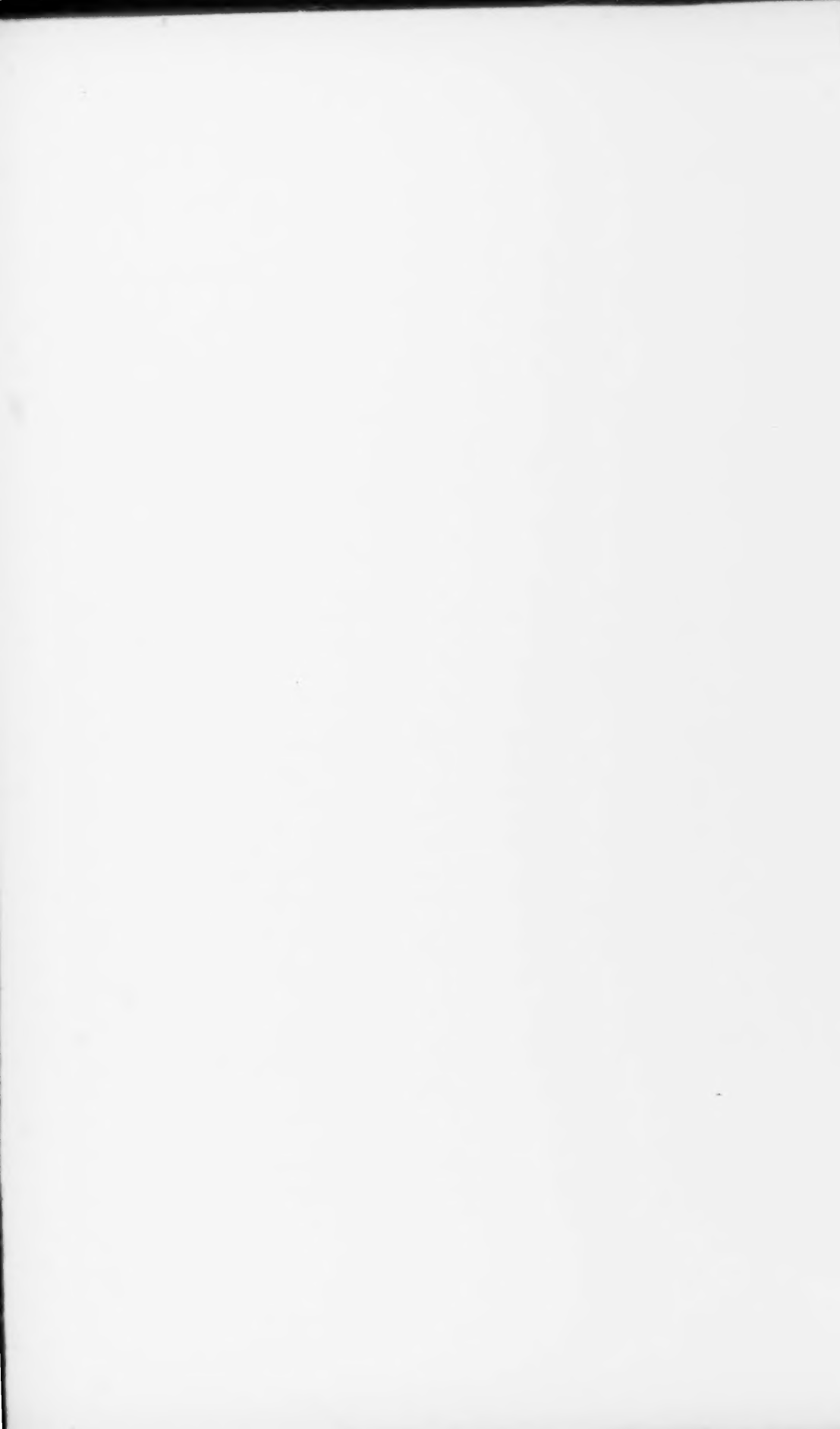
<u>Exhibit Number</u>	<u>Name of Exhibits</u>
"1"	FIRST TRACT, 8-3-1893, DEED - J. T. Robinson & wife to J. L. Catlett - @ 80.0 acres p.C of A - p.4            Item #22
"2"	SECOND TRACT, 11-11-1881, ORIGINAL PATENT - O. M. Roberts, Governor of Texas to J. L. Catlett - 14.6 acres p.C of A - p.4            Item #22
"3"	THIRD TRACT, 11-27-1884, DEED - T. B. Cagle & wife to J. L. Catlett - @ 54.5 acres p.C of A - p.4            Item #22
"4"	FOURTH TRACT, 11-12-1880, DEED - J. G. Loudder & wife to J. L. Catlett - @ 54.0 acres p.C of A - p.4            Item #22
"5"	FIFTH TRACT, 10-19-1883, DEED - A. E. Looper & wife to James Catlett - @ 50.0 acres p.C of A - p.4            Item #22
"6"	PART of FIFTH TRACT, April 14, 1884, DEED - JAMES L. CATLETT and wife to J. G. Powledge - @ 27 acres or less p.C of A - p.5,19    Items 23, 60



- "7" MAY 29, 1929, DEED - S. C. Catlett, "Pharon", to C. E. Catlett, "Charlie", WARRANTY DEED #95390, recorded 6-27-1936  
p.C of A p.6,7 Item #27,31
- "8" September 19, 1973, WARRANTY DEED #19329, C. E. Catlett "Charlie", and Ernest Luther Catlett "Ernest", to Pharon C. Catlett (without consideration)  
p.C of A - p.7,8,9,10 Item #31,32,34
- "9" April 26, 1975, QUIT CLAIM DEED #6521 - Ernest Luther Catlett, "Ernest" to Pharon C. Catlett, "Pharon", (without consideration)  
p. C of A - p.9,10 Item #34
- "10" June 19, 1975, DEED of TRUST #10550, Pharon C. Catlett acting individually and as Independent Executor of the Estate of Charlie Catlett, Dec'd, and wife (alleged), Florence-I. Catlett to Federal Land Bank of Houston (\$30,000 loan by "Pharon" and "Florence" on the FIRST TRACT of the Aubrey, Texas farm, Exhibit "1" herein.  
p.C of A - p.11 Item #35

FEDERAL RULES OF CIVIL PROCEDURE, RULE,  
10(c)

"A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."





NUMBER 77-2726

ESTATE OF ERNEST  
LUTHER CATLETT,  
DECEASEDIN THE PROBATE COURT  
NUMBER ONE OF  
TARRANT COUNTY, TEXASORDER AUTHORIZING PAYMENT OF CLAIM

On this day came on for hearing the  
Authenticated Claim of John R. Lively, and  
after due notice appeared John R. Lively and  
Johnny W. Richards, II, the Successor Admin-  
istrator, and the Court finding that the claim  
is in proper form, and the Court after hear-  
ing the evidence and considering the exhibits  
finds that the claim of John R. Lively is  
proper, that the Administrator has not disal-  
lowed same, and that the Estate of E.L. Cat-  
lett, deceased is indebted to John R. Lively  
in the sum of Forty <sup>one</sup> ~~two~~ Thousand <sup>Six</sup> ~~Two~~ Hundred  
Eighty-Four ~~and NO/100 Dollars (\$42,228.00):~~  
\$41,684.

ORDERED that the claim of John R. Lively  
in the sum of Forty <sup>One</sup> ~~Two~~ Thousand and <sup>Six</sup> ~~Two~~  
Hundred <sup>Eighty-Four</sup> ~~Twenty-Eight~~ and NO/100 Dollars  
\$41,684.  
(~~\$42,228.00~~) against the Estate of E. L.  
Catlett, deceased, is ALLOWED by this Court.



It is further ORDERED that Johnny W.  
Richards, II, the Successor Administrator,  
pay to John R. Lively from the funds of the  
mB Estate the sum of Forty-~~Two~~ Thousand ~~Two~~  
mB One Six  
Eighty-Four  
Hundred ~~Twenty-Eight~~ and NO/100 Dollars  
\$41,684.  
(~~\$12,228.00~~).

SIGNED this the 8th day of February,  
1985.

/s/ Robert M. Burnett  
JUDGE PRESIDING

2 / 20/85  
11.00



THE CONSTITUTION OF THE UNITED STATES

## ARTICLE III.

"SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or . . . .  
- to Controversies between Citizens of different States . . . . "

## AMENDMENT V

" . . . . . nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

## AMENDMENT XIV

" SECTION 1. . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."



NUMBER 77-2726

ESTATE OF ERNEST                      IN THE PROBATE COURT  
LUTHER CATLETT,                      NUMBER ONE OF  
DECEASED                      TARRANT COUNTY, TEXAS

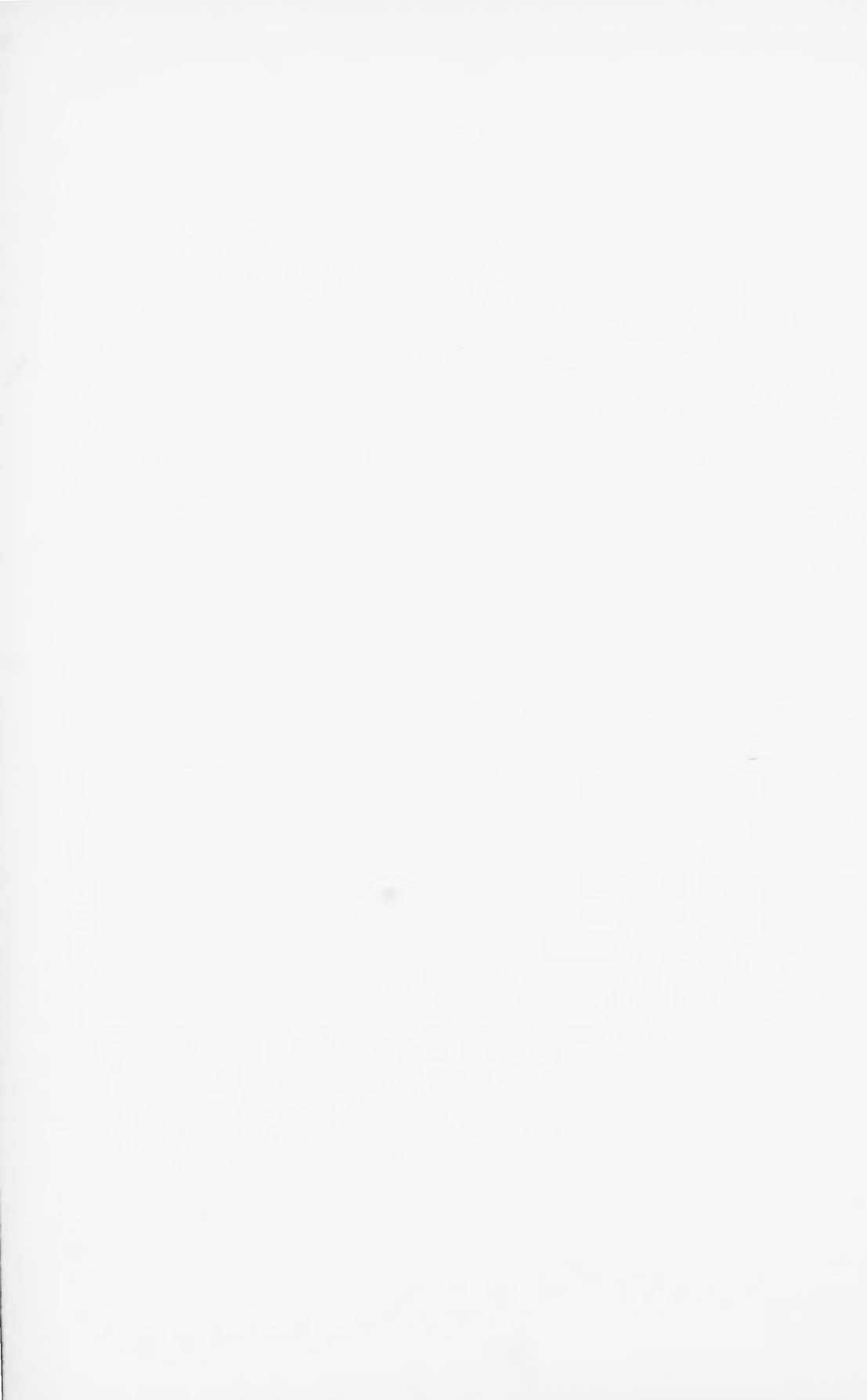
"AUTHENTICATED CLAIM OF JOHN R. LIVELY"

1. JOHN R. LIVELY ("Claimant") is the owner of a claim against this Estate in the sum of \$42,228.00. This claim is founded upon reasonable and necessary legal services incurred as the result of the breach of contract by the prior administrator of the Estate. Attached hereto as Exhibit "A" is an itemized statement of dates, services rendered and amount of time incurred. Claimant further states that a reasonable attorney's fee for the services described in Exhibit "A" in Tarrant County, Texas, at the time that they were rendered was \$85.00 per hour.

2. Claimant requests allowance and payment of this claim of \$42,228.00.

/s/ John R. Lively

JOHN R. LIVELY, Claimant  
1130 Fort Worth Club Tower  
Fort Worth, Texas 76102





STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. LIVELY and after being duly sworn by me, stated that the foregoing claim is just and that all legal offsets, payments and credits known to claimant have been allowed.

/s/ John R. Lively  
JOHN R. LIVELY, Claimant

SUBSCRIBED AND SWORN TO BEFORE ME by JOHN R. LIVELY on this the 25th day of January, 1985, to certify which witness my hand and seal of office

/s/ Gay Lemar  
Notary Public in and for  
the State of Texas

My commission expires

8/ 1 / 88

PLAINTIFF'S EXHIBIT " I " in the Complaint

\* Atty sending Johnny Richards a copy  
of claim

(NOTE: Copied page 1 only)